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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों के छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union
Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 सितम्बर, 1995

आ.अ. 61.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट उत्तर प्रदेश विधान सभा के लिए सामान्य निर्वाचन, 1993 के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथादर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों का संसद के किसी भी सदन के या किसी राज्य के विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्रम सं. व नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्थता का कारण
1	2	3	4	5
1.	उत्तरप्रदेश विधान सभा के लिए साधारण निर्वाचन, 1993	145—रामनगर	श्री किशोर, ग्राम—भीतापुर, पो.—बहुरामघाट, बाराबंकी (उ.प्र.)	निर्वाचन व्यर्थों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	146—कैसरगंज	श्री अजी मुल्ला, ग्राम—घरमपुर, पो.—पासुपुर, जिला—बहराइच (उ.प्र.)	—वही—
3.	—वही—	225—बांसडीह	श्री नन्वजी, ग्राम—खानपुर, पो.—डुमरिया, जिला—बलिया (उ.प्र.)	—वही—
4.	—वही—	276—इलाहाबाद दक्षिणी	श्री राम विलास पाल, 3ए, बावशाही मंडी, इलाहाबाद (उ.प्र.)	—वही—
5.	—वही—	294—घाटमपुर	श्री धर्मेन्द्र सिंह, ग्राम सुखपुर (उ.प्र.)	—वही—
6.	—वही—	—वही—	श्रीमती सावित्री, ग्राम—सुखपुर (उ.प्र.)	—वही—
7.	—वही—	321—हमीरपुर	श्री महेश, ग्राम—बखरोलीगोकुलडेरा, पो. बिलोटा, तह.—हमीरपुर	—वही—
8.	—वही—	324—चरखारी (अ.जा.)	श्री शम्भूबयाल, मु. गांधीनगर, महोबा, उत्तर प्रदेश।	—वही—
9.	—वही—	—वही—	श्री कसिया उर्फ काशी प्रसाद, कुलपहाड़, हमीरपुर (उ.प्र.)	—वही—
10.	—वही—	327—ललितपुर	श्री मुन्ना लाल रेक्वार, सुपुल श्री हनु, 214/8 सिविल लाईन, ललितपुर।	—वही—
11.	—वही—	—वही—	श्री रमेश नारायण, सुपुल श्री भगवत नारायण, ग्राम व पो. जाखलोन, (उत्तर प्रदेश)	—वही—
12.	—वही—	371—गंगीरी	श्री चरण सिंह, ग्राम बाईकला, तह. अतरीली, भलीगढ़ (उ.प्र.)	—वही—

1	2	3	4	5
13.	उत्तर प्रदेश विधान सभा के लिए साधारण निर्वाचन, 1993	400—खेकड़ा	श्री चरनजीत सिंह, 2/45, सेक्टर-2, राजेन्द्र नगर, साहिबाबाद, जिला—गाजियाबाद।	विधि द्वारा अपेक्षित रीति से लेखा बाखिल करने में असफल रहे।
14.	—वही—	कड़ा	श्री इलमास, ग्राम—रटौल, जिला मेरठ (उ.प्र.)	निर्वाचन व्ययों का कोई भी लेखा बाखिल करने में असफल रहे।

[सं. 76/उ.प्र.—वि.स./93]

आदेश से

जनश्याम श्रोहर, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th September, 1995

O.No. 61 :—Whereas the Election Commission is satisfied that each of the contesting candidate specified in column 4 of the table below at the General Election to the Uttar Pradesh Legislative Assembly as specified in column (2) held from the constituency specified in column(3) against his name has failed to lodge an account of his election expenses as required by the Representation of the people Act, 1951 and the rules made thereunder as shown in column (5) of the said Table;

And whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice and the Election Commission is thus satisfied that they have no good reason for justification for the said failure.

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order:—

TABLE

Sl. No.	Particulars of election	No. & Name of constituency	Name & Address of contesting candidates	Reasons for disqualification
1	2	3	4	5
1.	General Election to the Uttar Pradesh Legislative Assembly, 1993.	145—Ramnagar	Sh. Kishore, Vill. Meetapur, Post Bahramghat, Barabanki (U.P.)	Failure to lodge any account of election expenses.
2.	General Election to the Uttar Pradesh Legislative Assembly, 1993.	146—Kaiser ganj	Sh. Azimulla, Vill. Dhiarampur, Post. Patapur, Bhariach, (U.P.)	—do—

1	2	3	4	5
3.	General Election to the Uttar Pradesh Legislative Assembly, 1993	225-Bansdih	Sh. Nandjee, Vill. Khanpur, Post Dumaria, Ballia (U.P.)	Failure to lodge any account of election expenses.
4.	-do-	276-Allahabad South	Sh. Ramvilas Pal, 3A Badshahi Mandi, Allahabad. (U.P.)	-do-
5.	-do-	294-Ghatampur	Sh. Dharmendra Singh, Vill. Sukhapur, Uttar Pradesh.	-do-
6.	-do-	-do-	Smt. Savitri, Vill. Sukhapur, Uttar Pradesh.	-do-
7.	-do-	321-Hamirpur	Sh. Mahash, Vill. Baihrauli, Gokhuldera, Post Bilohita, Teh. Hamirpur (U.P.)	-do-
8.	-do-	324-Charkhari (SC)	Sh. Shambhoodayal, Moh. Gandhi Nagar, Mahoba, (U.P.)	-do-
9.	-do-	-do-	Sh. Kasiya Urf, Kashi Prasad, Kulpahar, Hamirpur, Uttar Pradesh.	-do-
10.	-do-	327-Lalitpur	Sh. Muna Lal Rokwar, S/o Mannu, 214/8, Civil Line, Lalitpur, (U.P.)	-do-
11.	-do-	-do-	Sh. Ramesh Naran, S/o Bhgwat Narair, Vill. & Post Jakhlon, Uttar Pradesh.	-do-
12.	-do-	371-Gangiri	Sn. Chaman Singh, Vill. Biakalan, Distt. Atarouli, Aligarh, (U.P.)	-do-
13.	-do-	400-Khekra	Sh. Charanjit Singh, 2/45, Sector-2, Rajendra Nagar, Sahibabad, Distt. Ghaziabad (U.P.)	Failed to lodge account in manner required by law.
14.	-do-	-do-	Sh. Ilmas, Vill. & P. O. Rataul, Distt. Meerut, (U.P.)	Failure to lodge any account of election expenses.

[No. 76/UP-LA/93]

By Order,

GHANSHYAM KHOHAR, Secy.
ELECTION COMMISSION OF INDIA

नई दिल्ली, 13 सितम्बर, 1995

आ. अ. 62.—1991 की निर्वाचन याचिका नं. 1 में मुंबई उच्च न्यायालय, (नागपुर पीठ) के दिनांक 3 अगस्त, 1992 के निर्णय के विरुद्ध दाखिल की गई 1993 की सिविल अपील नं. 640 में भारत के उच्चतम न्यायालय के दिनांक 18 जुलाई 1995 के आदेश को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116-ग (2) (ख) के अनुसरण में निर्वाचन आयोग पत्रद्वारा प्रकाशित करता है।

[म. 82/महा-लॉ.म./1/91 (नागपुर) 93]

आदेश से,

क.पी.जी. कुट्टी, सचिव

New Delhi, the 13th September, 1995

O.N. 62.—In pursuance of clause (b) of sub-section 2 of section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order, dated 18th July, 1995 of the Supreme Court of India in Civil Appeal No. 640 of 1993 filed against the judgement dated 3rd August, 1992 of High Court of Judicature at Bombay, Nagpur Bench in Election Petition No. 1 of 1991.

[No. 82/MT-HP/91(Nagpur)93]

By Order,

K. P. G. KUTTY, Secy.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 640 OF 1993
(With Cross Objections)

Gajanan Krishnaji Bapat & Anr

..Appellants

Vs.

Dattaji Raghobaji Meghe & Ors

..Respondents

JUDGMENT

DR. ANAND, J.—The appeal under Section 116A of the Representation of People Act, 1951 (hereinafter referred to as the Act), by two electors is directed against the judgment and order of a learned Single Judge of the Nagpur Bench of the High Court of Judicature at Bombay dismissing the election petition. The returned candidate has also filed cross-objections challenging those findings which have gone against him. Both shall be disposed of by this common judgment.

The appellants filed an election petition under Section 80 of the Act challenging the election of respondent No. 1, Dattaji Raghobaji Meghe, the returned candidate from 23 Nagpur Parliamentary Constituency in the election held for the Xth Lok Sabha and also sought a declaration to the effect that respondent No. 2 Shri Banwarilal Bhagwandas Purohit be declared as the duly elected candidate from the said Constituency after setting aside the election of the returned candidate. The challenge to the election of respondent No. 1 was mainly based on the allegations of commission of various corrupt practices by him and/or his election agent detailed in the petition.

Appellant No. 1 was at the relevant time the Vice President of Bhartiya Janta Party (Nagpur City) Nagpur while appellant No. 2 was a worker of the Bhartiya Janta Party. Respondent No. 2, Shri Banwarilal Bhagwandas Purohit, the defeated candidate had been sponsored as a candidate by the Bhartiya Janta Party while respondent No. 1 Datta Raghobaji Meghe, the returned candidate, had been sponsored by Congress (I). Besides respondents 1 and 2, the other candidates, who had contested the election and had not withdrawn their candidatures from the contest, numbering more than forty two were also joined as respondents to the election petition.

The main case of the appellants projected before the High Court and canvassed before us against the returned candidate was that the expenditure incurred or authorised by respondent No. 1 or his election agent was much more than what had been disclosed by him in the return of expenditure lodged under Section 78 of the Act with the District Election Officer and that huge expenditure incurred by him in connection with his election had been suppressed. It was further alleged that though the expenditure incurred in connection with the election of respondent No. 1 was shown to have been incurred by the political party, some other sympathetic associations, organisations, individuals, friends and well-wishers, the said expenditure in fact had been incurred and/or authorised by respondent No. 1 and/or his election agent and the amount spent by those organisations had been provided out of the funds made available by respondent No. 1 to those parties for making the payment and their names were given only to conceal the truth of the transactions so as to escape from the mischief of Section 123(6) of the Act. It was pleaded that some of the organisations under whose names the advertisements had appeared, were in fact non-existent and that the individuals who were shown ostensibly to have incurred some expenditure for furtherance of the prospects of the election of respondent No. 1, had actually no funds of their own to spend and respondent No. 1 had placed his own funds in their hands to meet the expenditure. According to the appellants, the expenditure incurred by respondent No. 1 was far in excess of the limit prescribed by Section 77 of the Act read with Rule 90 of the Conduct of Election Rules, 1961 (hereinafter the 'Rules') and the return of election expenditure did not reflect the correct state of affairs. Since respondent No. 1 had exceeded the prescribed limit of expense, he was guilty of committing the corrupt practice under Section 123(6) of the Act and his election was, therefore, liable to be declared void and respondent No. 1 also disqualified for committing the corrupt practice.

Respondent No. 1 before filing his written statement raised a preliminary objection, through Ex. 16 and Ex. 17, to the effect that the allegations made in the petition were vague and that material facts and particulars had not been supplied and as such the vague pleadings were liable to be struck off and the election petition rejected under Section 81(3) read with Section 86 of the Act. On 29-10-1991, however, Ex. 16 was rejected while application Ex. 17 was allowed to the extent that the allegations made in the petition regarding the commission of corrupt practice under Sections 123(2) and (3A) were found to be vague and non-specific and the pleadings in that connection were directed to be struck off. Against the order of rejection of the preliminary objection raised in Ex. 16 respondent No. 1 preferred a special leave petition being SLP (C) No. 19165-66/91 in this Court which was dismissed on 20th December, 1991 by the following order:

"The special leave petition is dismissed. However, this order will not prevent him from raising objections, which are available to him according to law, when the evidence is made on the relevant allegations."

Subsequently, an application, Ex. 27, filed by the appellants for leave to amend the election petition for correcting certain inadvertent "errors, omissions and slips" was allowed on 28th November, 1991 and the necessary corrections were carried out in the election petition. Again an application Ex. 47A filed by the appellants seeking further amendment of the verification clause of the petition was allowed by the Court on 18-1-1992, after an earlier application, Ex. 44, filed by the appellants seeking amendment of the election petition had been allowed on 18-12-1991.

A detailed written statement was thereafter filed by respondent No. 1 in which the charges levelled against him in the election petition were vehemently denied. Respondent No. 1, in respect of certain items of expenditure, took a specific stand that the expenditure on those items as detailed by the appellants in the election petition, were incurred by Nagpur City District Congress Committee and Nagpur Gramin Congress Committee and not by him. Similarly, in respect of some other items of expenditure, respondent No. 1 took the plea that the expenditure in respect of those items was incurred by certain organisations, associations, individuals, friends and well-wishers, without

any authority or consent of respondent No. 1 or his election agent and completely on their own volitions. In the written statement, the names of some of the organisation and individuals as well as the associations of persons and the political party who had incurred the expenditure were furnished by respondent No. 1. It was maintained by respondent No. 1 that he had not incurred any expenditure besides the one reflected in the return of election expense and had not committed any corrupt practice. After the amendments were carried out by the appellants, the returned candidates, Respondent No. 1 filed yet another application, Ex. 50 seeking striking out of some other 'vague and non-specific' pleadings but the same was rejected, though the prayer of Respondent No. 1 to amend the written statement made through application Ex. 49 was allowed on 9-1-1992.

From the pleadings of the parties, the following issues were framed on 21-1-1992 :—

- (1) Do the petitioners prove that they were electors in the election held for the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency ?
- (2) (a) Do the petitioners prove that a meeting was held in the office of the Maharashtra State Handloom Corporation on 17-5-91 during the Tenth Lok Sabha Election from 23, Nagpur Parliamentary Constituency ?
- (b) Do the petitioners further prove that the said meeting was addressed by the respondent No. 1 ?
- (c) Do the petitioners prove that in the said meeting, respondent No. 1 had declared that labour charges for handloom weavers would be increased by 0.35 paise per sq. metre from June 1991 ?
- (d) Do the petitioners prove that the said declaration of increase in the labour charges was made by respondent No. 1 to hold out promise of gratification for inducing the weavers numbering 1,50,000 to vote for the respondent No. 1 ?
- (e) Do the petitioners prove that the said declaration made by the respondent No. 1 amounts to commission of corrupt practice within the meaning of Section 123(1)(A) i.e. bribery ?
- (f) Do the petitioners further prove that the said declaration made by the respondent No. 1 also amounts to undue influence constituting commission of corrupt practice under Section 123(2) and further amounts to direct or indirect interference or attempt to interfere with the free exercise of electoral rights of the handloom weavers who were electors in the said election ?
- (3) Do the petitioners prove that the respondent No. 1 has not maintained correct and proper accounts as is required to be maintained under Section 77 and has incurred expense in excess of the limit prescribed thereunder and thereby committed corrupt practice under Section 123(6) of the Act ?
- (4) Do the petitioners prove that the respondent No. 1 incurred more expenditure than what is disclosed by him in the return of expenditure annexed as Annexure 7 to the petition, on the following items as alleged in paras 2, 4 to 2.10 of the petition, on account of the—
 - (i) payments made to Shri Devi Sharda Mangal Karyalaya, Nagpur, by way of office rent ?
 - (ii) payments made to M/s Vishwa Bharti Typing Institute, Nagpur.
 - (iii) payments made to M/s. Prince Travels, Nagpur, for hiring autorickshaws and taxis.
 - (iv) payments made to M/s. Pramod Automobiles, Nagpur.
 - (v) payments made to M/s. Raj Automobiles, Nagpur.
- (5) (a) Do the petitioners prove that the respondent No. 1 has authorised and/or incurred expenditure on the undermentioned items which has not been disclosed in the return of expenditure annexed as

Annexure 7 to the petition as alleged in paras mentioned in the petition described against each item hereunder ?

- (b) (i) Do the petitioners prove that printing cards at Annexure 9 indicate that the same have been published by Nagpur City District Congress Committee, Nagpur, but the expenditure incurred on printing and distribution of about 15 lacs voter-cards has been made by respondent No. 1 to the extent of Rs. 2,25,000. Do the petitioners further prove that the respondent No. 1 has got printed those cards at Shakti Offset Works, Nagpur, and the said firm received a total amount of Rs. 2,25,000 from respondent No. 1 ?
- (ii) Do the petitioners prove that respondent 1 got printed 3,25,000 posters of different sizes though those posters show that they were issued by President, Nagpur District Congress Committee and the entire expenditure of these posters to the tune of Rs. 3,40,250 was made by respondent No. 1 ?
- (iii) Do the petitioners prove that the respondent No. 1 published his candidature by large size cut-outs at places mentioned in Annexure 11 alleged to be prepared by persons whose names are given in Annexure 10 ? Do the petitioners further prove that cost of these cut-outs comes out to Rs. 2,83,000 as given in Annexure 11 and was incurred by respondent No. 1 by paying the same to persons mentioned in Annexure 10 ?
- (iv) Do the petitioners prove that the respondent No. 1 advertised his candidature by wall paintings at different locations at Annexure 12 costing about Rs. 88,500 ? Do the petitioners further prove that these wall-paintings work was got executed by respondent No. 1 through painters and incurred expenditure of it by payment of charges of painters?
- (v) Do the petitioners prove that about 12,40,830 letters such as those at Annexure 13 and 14 were got prepared by the respondent No. 1 and were sent to voters and almost all the voters received these letters. Do the petitioners further prove that although on this letter, it appears that the same is being sent at the instance of Sarva Dharma Sambhav Samajik Sanghatna, the expenditure required in fact was incurred by respondent No. 1 to the extent of Rs. 12,40,830 ?
- (vi) Do the petitioners prove that advertisement in newspapers at Annexure A at Sl. Nos. A-2, A-5, A-7, A-8, A-10, A-14 to A-19, A-22 to A-27, A-28(b), A-30(a) (first part) A-30 (b) (second part); Annexure B at Sl. Nos. B to B9, B11 to B14, B17 and B18, Annexure C at Sl. Nos. C1, C2, C4, C5, C10, C12, C14 to C18, C23 and C24, Annexure D : at Sl. Nos. D1, D2, D3, D5, D7, D8, D11, D13, and D15; Annexure E at Sl. Nos. E1, E2, E9, and E10; Annexure F, At Sl. Nos. F1, F2, F3, F6, F10, F14 and F16; Annexure G at Sl. Nos. G1, G2 and G3; Annexure H at Sl. Nos. H11 to H14, H17, H8, H11 and H17, were published by respondent No. 1 himself in connection with the election and he himself incurred the expenditure?
- (vii) Do the petitioners prove that the advertisements appearing in newspapers at—

Annexure A : at S. Nos. A6, A9, A11 to A13, A20, A21, A27(a), A28, A30(b) (first part) and A31 (b);

Annexure B : At S. Nos. B1, B2, B3, B10, B15, B16 and B19.

Annexure C : at S. Nos. C3, C6 to C9, C11, C13, C19 to C22.

Annexure D : at Sl. Nos. D6, D9, D10, D12, and D14.

Annexure E : At Sl. Nos. E3 to E8;

Annexure F : at S. Nos. F3, F5, F7 to F9, F11 to F13 & F15;

Annexure G : at S. Nos. G4 to G8 ; are published in connection with election by the respondent No. 1 and the expenditure of which is incurred by the respondent No. 1 himself though in the said advertisement the names of publishers are shown as persons other than the respondent No. 1 as given in Annexures.

- (6)(a) Do the petitioners prove that the respondent No. 1 had employed M/s. Yugdharna Consultant and Commercial Services, Nagpur to publicise his candidature and incurred expenditure as per the details shown in Annexure 17 and 18 and alleged in para 2.13 of the petition.
- (b) Do the petitioners prove that besides the above agency, the respondent No. 1 had employed two other agencies, namely, Orange City Advertising and Prasad Publicity for publishing his candidature by advertisements issued in the newspapers and thereby authorised and incurred expenditure as per details shown in Annexure 18A, 18B and 18C and alleged in paras 2.23A to 2.23D of the petition?
- (c) Do the petitioners prove that election agent of respondent No. 1 incurred total expenditure to the tune of Rs. 39500 on 14-6-91 and 17-6-91 for publication of advertisement in connection with the election ?
- (7) Do the petitioner prove that the respondent No. 47 did not properly scrutinise the nomination of the respondent No. 3 and he was allowed to represent himself as such, although a wireless message dated 26-4-91 to the contrary was received by the Returning Officer prior to the acceptance of the nomination papers from the Chief Electoral Officer of the Maharashtra ?
- (8) Do the petitioners prove that by allowing the respondent No. 3 to represent himself as the official candidate of R.P.T. (K), the result of the election of the respondent No. 1 has been materially affected?
- (9) Are the petitioners entitled to have inspection of the ballot papers on the basis of the allegations made in paras 3.1 to 3.11 of the petition and the allegations made in paras 1 to 13 of Ex. 28?
- (10) Do the petitioners prove that the election of the respondent No. 1 to the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency is void on account of the commission of corrupt practices under Section 123(1A) & Section 12(2) and Section 123(6) of the Act?
- (11) Do the petitioners prove that the respondent No. 2 has secured majority of valid votes to entitle him to be declared as duly elected from 23, Nagpur Parliamentary Constituency to the Tenth Lok Sabha ?
- (12) Do the petitioners prove that but for the votes obtained by respondent No. 1 by alleged corrupt practices, the respondent No. 2 would have obtained majority of valid votes to entitle him to be declared duly elected ?
- (13) Whether respondent No. 2 can be declared as duly elected to the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency, Nagpur ?
- (14) What order ?

After the evidence of some of the witnesses was recorded on behalf of the appellants, Election Petitioner No. 1 filed an application, Ex. 701 on 27-5-1992, once again for amending the election petition in the light of the evidence recorded. Respondent No. 1 filed his objections to the said

application through Ex. 834 on 15-6-1992. The learned Single Judge, allowed the application permitting the election petitioner to amend the election petition once again and being of the view that no new issue was required to be framed on the basis of the proposed amendments directed that the Respondent No. 1 could apply for recalling any of the petitioners' witnesses for further cross-examination on 17-6-1992. Respondent No. 1 filed an application Ex. 835 for leave to amend the written statement which was also allowed. We shall advert to the proceedings concerning various amendments in the latter part of this judgment.

The learned Single Judge after conclusion of the evidence and after hearing learned counsel for the parties held that the appellants (election petitioners) had proved that respondent No. 1 had not maintained a correct and proper account of the election expenditure as is required to be maintained under Section 77 of the Act. It was also found that respondent No. 1 had not shown in his return an expenditure to the extent of Rs. 58270 apart from the expenditure shown by him in the return of election expenditure but since the addition of the said amount, to the amount of expenditure shown by respondent No. 1 in his return of election expenses, did not exceed the permissible limit of Rs. 1,50,000, the returned candidate, respondent No. 1, did not commit any corrupt practice as envisaged by Section 123(6) and dismissed the election petition but without any order as to costs in favour of Respondent No. 1.

Since, in this appeal learned counsel for the appellants Dr. Ghatate has confined his case to issues 3, 4(v), 5(b) (i) (ii) (v) (vi) (vii); issue No. 6 (a) (b) (c) and partly Issue No. 10 we are, as such, relieved of the necessity of dealing with the other issues. We confirm the findings of the High Court in respect of those issues of which correctness has not been disputed before us.

The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order to exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and election must be challenged only in the manner provided for by the Act. In *Jyoti Basu Vs. Debi Ghosal* (1982 (3) SCR 318), this Court observed :

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts similar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on consideration of alleged policy because policy in such matters as those relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in straight jacket."

Though the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate must not be tampered with, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons

interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this Court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petitioner has to succeed, he must establish definitely and to the satisfaction of the court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In the case of an election petition, based on allegations of commission of corrupt practice, the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift. (See with advantage: *Nihal Singh Vs. Rao Birendra Singh & Anr.* [1970 (3) SCC. 239]; *Om Prabha Jain Vs. Charan Das & Anr.* [1975 Supp.) SCR, 107]; *Doulat Ram Chauhan vs. Anand Sharma* [1984 (2) SCR, 419] and *Quamarul Islam Vs. S. K. Kanta and Others* [1994 Supp (3) SCC, 5]

By this proposition, however, we should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge (Section 106 Evidence Act). Though, the nature of allegations in cases alleging corrupt practices are quasi-criminal and the burden is heavy on him who assails an election but unlike in a criminal trial, where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election petitioner leads cogent and reliable evidence to prove the charges levelled against the returned candidate as, only then, can it be said that the former has discharged his burden. That necessarily means, that if the election petitioner fails to adduce such evidence which may persuade the Court to draw a presumption in his favour the returned candidate will not be required to discharge his burden by adducing evidence in rebuttal. While on this point it will be also pertinent to mention that the election petitioner has to establish the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in Civil action. In *Surendra Singh Vs. Hardayal Singh* (AIR 1985 SC 89), this Court held it

as:

"very well settled and uniformly accepted that charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities, as in civil action but proof beyond reasonable doubt and if after balancing evidence adduced there still remains little doubt in proving the charge its benefits must go to the returned candidate. Various tests have been laid down by the High Courts and by this Court to determine the extent of proof required to establish a corrupt practice. The most well accepted test however is that the charge must be established fully to the satisfaction of the Court. While insisting upon the standard of strict proof beyond a reasonable doubt, the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well nigh impossible to prove any allegation of corrupt practice and was said in *Harcharan Singh Vs. Sajjan Singh* (AIR 1985 SC

236) 'such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process'.

We are in respectful agreement with the above view. Some times direct evidence about the commission of corrupt practice may not be forthcoming or available and in that case, the charge may be proved by producing circumstantial evidence but the courts, in such cases insist, that each of the circumstances must be proved individually and all the circumstances put together must point unerringly only to the hypothesis of the commission of the corrupt practice by the returned candidate and must not be capable of any other hypothesis consistent with the innocence of the returned candidate. (See : *Quamarul Islam Vs. S. K. Kanta and Others* (supra); *Raj Narain Vs. Indira Gandhi* (1976 (2) SCR, 347); *Ch. Razil Ram Vs. Ch. Jaswant Singh Chouhari and Others* (1975 (4) SCC, 769).

The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however, strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since, pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that they must set forth full particulars of the corrupt practice that the alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This Section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice. So as to present a full picture of the cause of action.

A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. (See : *Samant N. Balakrishna Vs. George Fernandez and others* (AIR 1969 SC. 1201).

The jurisdiction to try an election petition has been vested in the High Courts. Election petitions are generally speaking tried by experienced Judges of the High Courts. Those learned Judges have the benefit of observing the witnesses when they give evidence. Therefore, the appreciation of evidence by the High Court is entitled to great weight. Generally speaking this Court accepts the findings of fact arrived at by the High Court after appreciation of evidence. (See *Sheodan Singh Vs. Mohan Lal Gautam* (AIR 1969 SC 1924). Being the Court of First Appeal, However, this court has no inhibition in reversing such a finding, of fact or law, which has been recorded on a misreading or wrong appreciation of the evidence or the law, but ordinarily and generally speaking this court does not, as it ought not to, interfere with the findings of fact recorded by the learned trial Judge if the High Court unless there are compelling reasons to do so. It is in the light of the above settled principles, that we shall consider the materials on the record and the findings of the High Court in respect of which challenge has been made before us.

As already noticed, the appellants confined their challenge to the findings in respect of some of the issues only which relate to the commission of corrupt practice of incurring or authorising expenditure in excess of the prescribed limits within the meaning of section 123(6) of the Act. It would, therefore, be appropriate to consider the parameters of the alleged corrupt practice before we examine the findings and the arguments in respect of the relevant issues.

Section 77 of the Act provides that every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both days inclusive, Explanation (1) which was introduced by the Amendment Act of 1974 declares that any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual, (other than the candidate or his election agent) shall not be deemed to be and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of sub-section (1) of Section 77. Sub-section (2), of Section 77 provides that the account of election expenses shall contain such particulars as may be prescribed and sub-section (3) lays down that the total of the said expenditure shall not exceed such amount as may be prescribed. Vide Section 78 of the Act the account of election expenses is required to be lodged with District Election Officer by every candidate at an election within thirty days from the date of election of the returned candidate. The maximum amount of election expenditure which may be incurred by the candidates for the Parliamentary and Assembly Constituencies has been prescribed in Rule 90 of the Conduct of Election Rules 1961. In so far as the Parliamentary Elections are concerned, the said limit is Rs. 1,50,000. Under Section 123(6) of the Act, the incurring or authorising of expenditure in contravention of Section 77 of the Act amounts to commission of a corrupt practice. However, every contravention of Section 77 of the Act does not fall within the mischief of Section 123(6) of the Act. Neither the violation of sub-section (1) of Section 77 nor the violation of sub-section (2) of Section 77 amounts to the commission of the corrupt practice under Section 123(6) of the Act. However, Section 77(3) mandates that the total of the expenditure in connection with the election shall not exceed the prescribed limit and therefore the provisions of Section 123(6) of the Act are related only to Section 77(3) of the Act. If a candidate incurs or authorises expenditure in excess of the prescribed limits, he commits the corrupt practice under Section 123(6) of the Act and his election is liable to be set aside and he also incurs the disqualification of being debarred from contesting the next election. From a plain reading of Section 123(6) and 77 including Explanation I to the Section 77 of the Act, it is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. An expenditure incurred by a third person, which is not authorised by the candidate or his election agent is not a corrupt practice. In *Magh Rai Patodia Vs. R. K. Birla*, [AIR 1971 SC 1295] after referring to a catena of authorities even before the inclusion of Explanation I to Section 77 of the Act by the Amendment Act 58 of 1974, it was emphasised that to prove the corrupt practice of incurring or authorising expenditure beyond the prescribed limit, it is not sufficient for the petitioner to merely prove that the expenditure beyond the prescribed limit had been incurred in connection with the election of the returned candidate but he must go further and prove that the excess expenditure was authorised or incurred with the consent of the returned candidate or his election agent. In *Rai Narain Vs. Indira Gandhi* (1976 (2) SCR 347) this Court reaffirmed the above view and taking note of the Amendment Act 58 of 1974, opined that voluntary expenditure incurred by friends, relations, or sympathisers of the candidate or the candidates political party are not required to be included in the candidate's return of expenses unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the party or the person, who incurred the expense. It is not enough to prove that some advantage accrued to the returned candi-

date or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to cloth the returned candidate with the liability of committing the alleged corrupt practice. Noting that during an election, the sponsoring or supporting political parties as well as friends, sympathisers and well-wishers do sometimes incur expenditure not only without the consent of the concerned candidate but even without his knowledge this court opined that the successful candidate cannot be clothed with all such expenses to suffer the disqualification.

In *P. Nalla Thampy Vs. Union of India* [AIR 1958 SC 1133], a Constitution Bench of this Court examined the validity of Explanation (1) to Section 77 (1) of the Act (introduced in 1974) and Chandrachud CJ (as he then was) while upholding its constitutionality, observed :

"In any democratic system of Government, political parties occupy a distinct and unique place. They are looked upon as guardian angels by their members though occasionally, they fail to discharge the benign role of guardian, leave alone the angelic part of it. It is through them that the generality of the people attempt to voice or ventilate their grievances. Considering, also the power which they wield in the administration of Government affairs, a special conferment of benefits on them in the matter of mobilities governing the election process cannot be regarded as unreasonable or arbitrary."

The Constitution Bench thus emphatically laid down that unless the expenditure is in fact incurred or authorised by the candidate or his election agent, he cannot be saddled with that expenditure. Of course a candidate cannot be permitted to place his own funds in the power or possession of a political party, an association, or some other persons or individuals for being spent on his behalf and then plead for the protection under Explanation (1) to Section 77 of the Act. Where the election petitioner successfully establishes that the funds were provided by the returned candidate, it would be immaterial as to who actually made the payments, which ought to have been included in the return of election expense. It is not "whose hand it is that spends the money". The essence of the matter is "whose money it is" that has been spent. In order that explanation (1) to Section 77 of the Act may apply, therefore, it must be proved that the source of the expenditure incurred was not out of the money of the candidate or his election agent.

Respondent No. 1 lodged the account of his election expenses with the District Election Officer on 12th July, 1991 supported by 45 vouchers disclosing the total expenditure of Rs. 72,421.85. The appellants in the election petition pleaded that Respondent No. 1 had not kept a true and correct account of the expenditure incurred and/or authorised by him or by his election agent in relation to the elections held on 12th June, 1991 and had exceeded the prescribed limit and thereby committed the corrupt practice under Section 123(6) of the Act. The appellants alleged that a huge amount of expenditure incurred in connection with the election of Respondent No. 1 was falsely shown to have been incurred by the political party and other associations, persons or individuals, though in fact the expenditure had been incurred and/or authorised by Respondent No. 1 himself or by his election agent. It was asserted that Respondent No. 1 had placed his own funds in the power and possession of the political party organisations and individuals for being spent in connection with his election in order to circumvent the law and escape from the consequence of incurring and authorising expenditure beyond the prescribed limits. It was alleged that Respondent No. 1 had incurred an expenditure for the purpose of his election during the period 25.4.1991 to 16.6.1992 to the tune of Rs. 38,30,375.50 as against the permissible limit of Rs. 1,50,000.00. The statement showing the expenditure allegedly incurred and authorised by Respondent No. 1 was given in para 224 of the election petition. At the trial however items Nos. 2, 8, 9 and 14 out of that statement were not proved. The High Court, however, in para 200 of the judgment found that besides the expenditure disclosed in the return of expenses filed by Respondent No. 1, he had also incurred the following expenses, which had been suppressed :

(1)	(2)
Rs. 17,900.00	for the amount paid to Raj Automobiles;
Rs. 1,320.00	for the advertisement in Tarun Bharat dated 28-4-1991
Rs. 7,000.00	for the advertisement in Tarun Bharat-Election Special.
Rs. 9,100.00	for the advertisement in Lokmat Dt. 12-5-1991 (Sharad Pawar/Mittra Mandal)
Rs. 22,900.00	in view of the findings recorded on issue No. 5(b) (vi) & (vii).
<hr/>	
Total Rs. 58,220.00	

and adding the amount of expenditure suppressed i.e. Rs. 38,220.00, to the declared expenses, the High Court found that the return of expenditure filed by Respondent No. 1 should have been for a sum of Rs. 1,30,641.85. However, since even that amount fell short of the permissible expenditure of Rs. 1,50,000.00, it was found that Respondent No. 1 had not committed the corrupt practice within the meaning of Section 123(6) of the Act. Whereas the appellants have challenged the findings of the High Court on some of the issues, as already noticed, the returned candidate, Respondent No. 1, has also filed cross objections challenging the finding of the High Court in respect of the addition of Rs. 58,220.00. Issue No. 4(v).

Though issue No. 4 concerns five items, it is only item No. (v) which has been pressed before us by the learned counsel for appellants. The findings of the High Court on items (i) to (iv) of Issue No. 4, which have been decided against the appellants have not been challenged before us and therefore, we confirm the findings of the High Court regarding those items. So far as Item No. (v) is concerned, it relates to the payments made by respondent No. 1 to M/s. Raj Automobiles for purchase of fuel etc.

According to the appellants, Respondent No. 1 in his return of expenditure submitted to the District Election Officer had, under Items 31 to 34, shown the expenditure incurred by him on account of purchases of petrol etc. from M/s. Raj Automobiles, Civil Lines, Nagpur under bill Nos. 401 to 404 for the period 1-5-1991 to 12-6-1991 but had failed to include the cost of 1180 litres of petrol also allegedly purchased by the returned candidate from Raj Automobiles over and above the quantity of petrol shown to have been purchased by Respondent No. 1 under bill Nos. 401, 402 and 403, as disclosed in the return of expenses filed by him for the period 1-5-1991 to 12-6-1991. The appellants specifically pleaded that petrol which had been shown to have been purchased by respondent No. 1 was for three vehicles : (i) MH-31-G-1722; (ii) MH-02-2200; and (iii) 7069 but the cost of purchase of 1180 litres of petrol had been suppressed. In his written statement, Respondent No. 1, admitted that under items 31 to 34 in his return of expenditure, he had shown the expenditure incurred by him on account of the purchase of petrol from M/s. Raj Automobiles during 1-5-1991 to 12-6-1991 but denied that Raj Automobiles, Civil Lines, Nagpur had sold 1180 litres of petrol over and above the quantity of petrol shown to have been purchased by him bill Nos. 401, 402, 403 filed along with the statement of account. It was pleaded that the allegation was vague and based on speculation and that no particulars had been given of the basis on which it was alleged that he had purchased 1180 litres of petrol at the cost of Rs. 17900/- in addition to what had been disclosed by him.

The appellants examined PW 36, Shankar Rao Gadage, who was working as an Accountant with Raj Automobiles at the relevant time. He deposed that a credit account had been started for Respondent No. 1 at the instance of Mrs. Shalini Bai Meghe (wife of respondent No. 1 and proprietor of Raj Automobiles) and credit slip books had been issued to Respondent

No. 1. That wherever petrol or oil was purchased by or for respondent No. 1, a copy of the credit slip used to be given to M/s. Raj Automobiles and its counterfoil was retained by the customer. The original credit slips were later on returned to the first respondent along with the bill. The witness after referring to the record deposed that fuel had been supplied to respondent No. 1 for car Nos. MH-31-1722, MH-02-2200, MK-1/1022 besides vehicle No. 1422 and 7069 during 1-5-91 to 16-6-91. He also proved a cash memo dated 16-6-1991 for bill No. 2503 (Ex. 681) for sale of 10 litres of petrol sold to respondent No. 1. The witness admitted that receipt No. 843 dated 12-7-1991 (Ex. 680) was in respect of bill Nos. 401 to 405 for the consolidated amount of Rs. 12,152.40 and went on to say that the payments had been made by a cheque by respondent No. 1. According to the witness, except the petrol which was sold under the cash memo Ex. 680 all other petrol and oil sold to Datta Meghe was worth Rs. 12,152.40 p. All these transactions are carried over and entered in their accounts. "We did not sell either oil or petrol besides these to Datta Meghe" was the categorical statement made by PW36 Gadage.

The appellants also examined Shri Prakash Baidya PW 33. This witness earlier used to be a partner in M/s. Raj Automobiles till 1991 where after he ceased to have any concern with Raj Automobiles. During the parliamentary elections, he was the General Secretary of the East Nagpur Assembly Constituency for BJP, the party to which both the appellants as well as respondent No. 2 belonged and was in charge of that area. He deposed that it is necessary to put one litre of oil if the consumption of petrol is 100 to 125 litres and that in one litre of oil, the run of the vehicle would be about 1000 kms. on an average consumption at the rate of 10 Kms per litre of petrol. During the cross-examination, he admitted that he had deposed about the ratio of consumption of petrol and oil from his experience and not from any book and also conceded that if an engine is old it would consume more oil as well as more petrol and that the oil-petrol ratio varies according to the horse power of the engine and its model and that if the chamber of the vehicle leaks, the consumption of oil would be more because of leakage and not on account of the consumption. He admitted that he is not an automobile engineer.

Respondent No. 1, the returned candidate in his statement admitted that his wife owns Raj Automobiles and that petrol and oil were bought by him on credit from Raj Automobiles, except for one cash transaction on 16th June, 1992 for Rs. 147.40 (Ex. 681). He went on to add that he did not buy petrol from any other petrol station except Raj Automobiles during the election period and that the credit slips which used to be issued to Raj Automobiles were received back by him with the bill from Raj Automobiles and after the bills were paid, the credit slips were destroyed. During his cross-examination, he stated that he had three diesel and four petrol cars with him for his election and that he had hired some motor cars and auto-rickshaw on 19, 20 and 21 May and 8, 9, 10th June, 1991 through Prince Travels. He disclosed the names of the parties from whom he had procured those vehicles and asserted that besides Car No. 7069 which he had procured from Nacar Yuvak Sanstha, he used the cars of the workers who used to come and see him. According to him vehicle No. 7069 is NE and the model was 3/4 years' old.

For coming to the conclusion that the returned candidate had purchased more fuel than the one shown by him in his return of expenditure, the High Court relied upon the petrol-oil ratio as deposed to by PW Baidya. It was found that the amount of oil admittedly purchased by the returned candidate as per bill No. 404 when considered in the light of the total fuel purchased would show that, much more fuel would have been purchased to consume the quantity of oil purchased as per bill No. 404. It was found by the High Court on the basis of the calculations made that the returned candidate had suppressed an expenditure to the tune of Rs. 18,277.60 but since the appellants had asserted that there had been suppression of the use of 1180 litres of petrol worth Rs. 17900 only, therefore only that much of expenditure could be added to the disclosed expenses of the returned candidate. The High Court while entering into the calculations did not base itself on the oil-petrol ratio but multiplied the consumption of petrol for one of the cars (MH-31G-1722), which was admittedly used by respondent No. 1 by 3 and drew an inference that for the other 3 cars also, the same amount of petrol

would have been consumed and thus found that the returned candidate would have purchased more petrol worth at least Rs. 18,277.60.

In the election petition a specific allegation had been made to the effect that the returned candidate had purchased 1180 litres of petrol in addition to what had been disclosed by him from Raj Automobiles. In the verification of the election petition, the appellants had disclosed the source of information with regard to the contents of para 2.10 as based on the information received from Shri Baidya PW. In the affidavit filed in support of the allegations of the said corrupt practice, the source of information was also disclosed to be Shri Baidya PW. However, PW 53, Shri Prakash Baidya, in his deposition in court did not state that he had conveyed any information to the election petitioners about the alleged excess purchase of 1180 litres of petrol by Respondent No. 1 from M/s. Raj Automobiles apart from the quantity of fuel purchased by him as disclosed in the return of election expenditure. In his statement, he only speculated about the excess purchase of petrol on the basis of oil-petrol ratio, based on his experience even though admittedly he is not an expert, not even an automobile engineer. In the election petition nothing was said about the petrol-oil ratio as the basis from which the appellants had inferred that 1180 litres of petrol had been purchased by the returned candidate in addition to the quantity of fuel shown to have been purchased by him from Raj Automobiles. Except for giving same figure of '1180' litres of petrol alleged to have been purchased by respondent No. 1, the appellants did not give any other facts or particulars in the election petition for alleging purchase of 1180 litres of excess petrol and left the matter totally vague. Even in his own statement, applicant No. 1, did not disclose the basis for arriving at the figure of '1180'. An attempt was apparently made to get sustenance from the testimony of Baidya PW 53, admittedly a partymen of the appellants and respondent No. 2, to support the allegations made in the petition on the basis of oil-petrol ratio. Even in that behalf we find that no evidence was led by the appellants to show as to what were the models of the vehicles which were used by the returned candidate and the extent to which all those vehicles had been used during the elections. The returned candidate, R1W1, was not even asked a single question regarding the extent of the use of the different vehicles to determine the mileage run in respect of each one of those vehicles. No explanation was even sought from him regarding the oil-petrol ratio or as to why so much of oil had been purchased for so little fuel. In this connection, it is also relevant to note that PW33 Shri Vijay Rathi, the Accountant of Raj Automobiles, had been summoned by the appellants along with the record presumably to prove the excess sale of 1180 litres of petrol, apart from the fuel shown in bill Nos. 401, 402, 403 and 404 but the record was never got exhibited and there is, thus, force in the submission of Mr. Manohar, learned counsel for the returned candidate that a presumption should be drawn against the appellants to the effect that the summoned record being inconvenient was not got exhibited by the appellants. The observation of the High Court, under the circumstances, to the effect that Raj Automobiles had suppressed the record does not appear to be well founded as the summoned record had been brought by PW33 to the court but the party chose not to get the same exhibited and no fault can be found with Raj Automobiles.

The High Court, as already noticed, found the suppression of Rs. 18,277.60 on the calculation based on the quantity of petrol purchased for vehicle No. MH-31-G-1722. The total petrol purchased for that vehicle was shown as 470 litres and the amount of oil purchased for that vehicle was shown to be 22 litres. Obviously, the ratio of oil-petrol as deposed to by Shri Baidya PW53, does not appear to have any relation to the petrol-oil ratio for the said vehicle. On the basis of the ratio as deposed to by PW53, more than 50 litres of oil should have been consumed for this vehicle. The High Court, as already observed, calculated the cost of 470 litres of petrol as Rs. 6927.80 and then multiplied it by 3 and arrived at the figure of Rs. 20,783.40 and deducting an amount of Rs. 2505.80, which had been shown to be cost of the petrol used for the two other vehicles used by the returned candidate, determined the suppression at Rs. 1827.60, but since the election petitioners had alleged suppression of the use of 1180 litres of petrol

worth Rs. 17,900 only, the High Court fastened the liability on the first respondent not for amount of Rs. 1827.60 but Rs. 17900 only.

In our opinion, the approach of the High Court was wrong and it fell into a complete error in making these calculations which are not even based on guess work but are totally conjectural in nature. The type of exercise done by the High Court had neither any factual foundation in the election petition nor even in the evidence. The High Court made out a new case neither the one pleaded by the election petitioners nor the one pleaded by the returned candidate. It was not a permissible course for the High Court to adopt while dealing with the allegation of commission of a corrupt practice in an election petition. Since, no evidence was led by the election petitioner about the allegation purchase of excess of 1180 litres of petrol, the High Court ought to have found the issue against the appellants. The finding of the High Court is, not only conjectural but is based on surmises and not on any evidence. Except PW1 who made a vague statement to the effect that he had seen the vehicles pleaded in the election petition, on the roads throughout during the elections, without indicating when, where and which vehicle, no other evidence was produced to show the extent to which the other vehicles in question had been used during the election by Respondent No. 1 or his election agent or by any other person with the consent of respondent No. 1 or his election agent. The election petitioner could have examined witnesses from different segments of constituency to depose, if they had seen the returned candidate or his election agent in that area in any particular vehicle and the number of occasions when the returned candidate had been so seen in different localities in the same or different vehicles to show the extent of run of those vehicles by bringing out the total distance likely to have been covered. No such evidence was led, though the production of such evidence was not an utter impossibility. That vehicle No. 1722 (which was made the basis for calculation of total run by the High Court) was more extensively used, than the other vehicles is a reasonable possibility which cannot be ignored. It was incumbent upon the appellants to prove the sale of 1180 litres of petrol in favour of Respondent No. 1 by Raj Automobiles as alleged by them in the election petition, by leading cogent and satisfactory evidence and they miserably failed to prove the said charge, let alone beyond a reasonable doubt. Even the mathematical calculation made by the High Court also appears to be incorrect but we need not detain ourselves to point out the same because of the infirmities pointed out by us in the approach of the High Court. The finding of the High Court on Issue No. 4 (v), therefore, cannot be sustained and we set aside that finding and hold that the appellants have failed to prove Issue No. 4(v) and consequently the addition of Rs. 17,900.00 in the return of expenditure of respondent No. 1 was not justified and the said amount shall have to be excluded. The cross-objection to that extent succeeds and is allowed.

ISSUE NO. 5(b)(i) & (ii)

The allegations of the election petitioners which led to the framing of Issue No. 5(b) (i) and (ii) are contained in paragraph 2.11 to 2.14 of the election petition and concern the issuance of voter cards to 1,243,382 voters in the constituency by the returned candidate after getting the same printed at a cost of Rs. 2,25,000 from Shakti Offset Works, appealing to the electorate to vote for the returned candidate. Besides, Respondent No. 1 is also alleged to have got printed posters of different sizes, namely, one lakh posters of 20"x30"; one lakh fifty thousand posters of 18"x23" and seventyfive thousand posters of 15"x20" propagating his candidature and these posters of different sizes, on an average of about 300 posters were exhibited at each of the 1250 polling booths in the Constituency. It was alleged that in all 3,25,000 posters were got printed by the returned candidate between 25-4-91 and 21-5-91 after incurring an expense of Rs. 3,40,250.00 for the printing of the said posters and the first respondent did not include in the return of his election expenses either the amount of Rs. 2,25,000 being the cost of the voters cards or Rs. 3,40,250 being the cost of the posters. In the

written statement, while admitting that the appeal made in the voter cards was to cast votes in favour of the first respondent and that the posters were also published for the furtherance of the prospects of the election of the first respondent, the returned candidate denied to have incurred any expenditure at all on printing and distribution of either the voter cards or the posters. According to the first respondent, he learnt about the printing of about four lakh voter cards by the Nagpur City District Congress Committee at its own expense and also came to know that some posters had been got printed and published by Nagpur City District Congress Committee while some more posters had been supplied by Congress (I) through its sub-organisations, at various levels, as per the past practice and as per the practice being followed by the other parties also for distribution and that he had neither authorised nor incurred any expense for the said cards and posters and that the same had been published and distributed without his knowledge let alone his consent.

The appellant Bapat PW1 in his statement deposed that voter cards had been issued about eight days prior to the poll to every voter as mentioned in the voters list Ex. 74 and according to his estimation the cost of printing of the voter cards would be Rs. 2,25,000. In the course of his statement he, however, admitted that in the case of respondent No. 2, Shri B. L. Purohit voter cards had also been issued to the voters but went on to say that the same had been got printed by the BJP at its own expense and were distributed by the workers of the B.J.P. without any expense being incurred or borne by respondent No. 2 himself. With regard to the publication of the posters, he deposed that the posters had been used by the returned candidate extensively. Specimen of some of the posters were produced as Ex. 75 to Ex. 78. PW1, asserted that the expenditure for the printing of voter cards and the posters in the case of the returned candidate was borne by the first respondent himself and not by anyone else.

The appellants in support of their case examined PW41 Suresh Deotale President of Nagpur Gramin Congress, PW 42 Baliram Dakhne Cashier, PW43 Baburao Zade, Secretary of the Gramin Congress and PW46 Marotrao Kumbhalkar, Treasurer of the Nagpur District Congress Committee. The evidence of all these witnesses however reveals that the Congress Committee had incurred the expenditure for publication of advertisements, voters cards, posters etc. in connection with the election of the returned candidate. These witnesses, however, admitted that the Congress party did not maintain any account in respect of election expenses either for the local bodies, Legislative Assemblies, or Parliament. That the work regarding the election propaganda and incurring of election expenses used to be entrusted to one or the other of the office bearers by the Party. In the case of the election of Datta Meghe, the witnesses deposed that the job had been entrusted to PW43 Baburao Zade. These witnesses further deposed that money for undertaking election expenses was collected by the Congress Party in the form of collection coupons. That a part of the election coupons were supplied

by the All India Congress Committee in the denomination of Rs. 2 and Rs. 5 while the rest were printed at the local levels. No account was, however, maintained of those coupons. The posters were also supplied by All India Congress Committee and the Provincial Congress Committee. PW43, Baburao Zade stated that Shakti Offset was one of the printers who had undertaken the printing job and that the orders for printing work had been placed by him on Shakti Offset through Shri Parshonikar. He admitted that he was a sitting MLA at the time of the election. He however was not aware if Parshonikar was the Secretary of Nagpur Shahr Zila Congress Committee. From the testimony of PW41 President of Nagpur Gramin Congress it emerges that the manner of collection of funds for election purposes was through sale of coupons. The witness denied that not maintaining of any accounts of those coupons, was a practice devised only for the present election but asserted that it was a practice which used to be followed in all earlier elections also. He went on to add and that when Shri Purohit, respondent No. 2, was a Congress Candidate in the Parliamentary elections of 1984 and 1989, the expense for his election propaganda had been incurred by the Congress Committee also by raising funds through sale of coupons and that no account had been kept either of the coupons or even of the total expense incurred during those elections. He was emphatic that the Congress Committee did not maintain any account in respect of the expenditure incurred by the Party in connection with the elections to the local bodies, Legislative Assembly or Parliamentary elections. The evidence of PW42 is almost on the same lines as that of PW41 and PW43 in all material particulars. This witness further deposed that he had learnt from PW43 Baburao Zade that an amount of Rs. 40,000 had been paid to Parshonikar towards the election expenses and that some posters had been issued by the All India Congress Committee also. The pass book of the Gramin Congress which was produced by the witness, revealed that after the withdrawal of an amount of Rs. 250 on 26-9-90, the next withdrawal was only on 10-4-92 of Rs. 3500 and that no other amount had either been deposited or withdrawn by the party from the Bank. The evidence of the witnesses to the effect that funds for election expenses were collected by sale of coupons and donations and no account was maintained of the receipt and expenses, thus, receives corroboration from the Bank Pass Book of the Gramin Congress. The testimony of PW43 which supports the testimony of PW41 reveals that about 30000 to 40000 voter cards besides some handbills worth Rs. 2000 to 3000 had been got printed by the Party through Shakti Offset Works. Explaining the reason for not maintaining any account of receipt and expense, the witnesses stated that since persons who bought the coupons or gave donations were mostly businessmen, who generally paid the amount by cash.

and did not want any record of the payment made by them to be kept, the accounts were not maintained. PW44 Vishnu Dutt Misra, Vice-President of the Nagpur Nagar Zila Congress and PW45 Awari, President of Nagpur Nagar Congress Committee deposed on the same lines as PW41 to PW43. PW46 Marotrao Kumbhalkar, the Treasurer of the Party, further stated that the responsibility for the election propaganda of the returned candidate in the present case had been placed on Shri Parshionikar, who was made the Secretary Incharge of the elections of Respondent No. 1 by the Party. According to PW46, an amount of about Rs. 14 lakhs had been collected through donations and sale of coupons, out of which Nagar Congress Committee had also got coupons worth about Rs. 7 lakhs printed and the remaining coupons worth Rs. 7 lakhs had been received from the All India Congress Committee. The job for giving advertisement to the newspapers etc. on behalf of various Congress Committees and organisations had been entrusted to Shri Parshionikar. He admitted that even in 1989 when respondent No. 2, Banwarilal Purohit, had contested the election as a Congress candidate, an amount of about Rs. 12 lakhs to Rs. 14 lakhs had been collected through sale of coupons and donations and the same had been spent by the Party for the furtherance of the election of Respondent No. 2, Banwarilal Purohit, without maintaining any account of receipt and expense.

Ashok Thakre PW54, the Manager of Shakti Offset Works deposed that none of the candidates had approached him personally for placing orders for printing work. He disclosed the names of the persons who had approached him on behalf of different candidates to place orders in connection with the printing of posters of different sizes, as reflected in Ex. 75 to Ex. 78 and asserted that orders had been placed for the same by Shri Parshionikar and the posters had been got printed by Gramin Congress for which purpose PW43 had also approached him. He went on to state that Shri Parshionikar had approached him on behalf of Nagar Zila Shehar Congress and that the printing works was got done by Shri Pande or behalf of the Yuvak Congress. PW 54 gave details of the various posters printed by him and by reference to ledger Ex. 738/9, stated that an amount of Rs. 50,000 has been shown to have been credited to the account by the President Nagar Shehar Congress Committee on 13-5-91 under five different receipts, Ex. 744 to 748, for Rs. 10,000 each, totally Rs. 50,000. He then deposed that a further sum of Rs. 50,000 had been received by the Press from Nagpur Zila Congress Committee, Gramin Vibhag and that a sum of Rs. 50,000 had also been received from Zila Congress Committee (Yuvak) on 6-6-91 and 23-10-91. An amount of Rs. 10,000 was received from Nagpur Zila Congress Committee (I) Gramin also. That all these amounts were spent for the printing work entrusted by

various Congress Committees and organisation of the propaganda material for the election of the returned candidate. The returned candidate in his deposition denied to have authorised or incurred any expense as alleged by the election petitioners in connection either with the printing of voter cards or the posters etc. and maintained that he had not even taken the responsibility to reimburse the expenditure on behalf of any one and that no expenditure in that behalf had been incurred by any one with his consent either.

After considering the evidence in its totality in the light of the pleadings in the election petition, we find that the election petitioner has not adduced any cogent, satisfactory or reliable evidence to establish that the expenditure of Rs. 2,25,000 and Rs. 3,40,250 as alleged in the petition had been incurred and/or authorised by respondent No. 1 for the printing of voter cards and the posters. On the others hand it emerges, that the entire expenditure on that behalf was undertaken and borne by the Congress Party and others and that it was so done as per the past practice also.

The argument of Dr. Ghatate however is that Thakre PWS4, the Manager of Shakti Offset Works who denied the receipt of any amount from the returned candidate could not be relied upon because there has been some tampering with the record, including the ledger, and therefore it should be inferred that he was helping the returned candidate. It was submitted by the learned counsel that even though PWS4 was produced and examined by the election petitioner, they were not bound by his entire evidence and that once it was established that the record had been tampered with, the onus would shift to the returned candidate to show that he was not responsible for the tampering or that the tampering had not been done at his instance. This argument is fallacious and does not impress us at all. There is no material brought on the record to even suggest let alone establish that the tampering had been done in the record at the instance of the returned candidate. No sound foundation had been laid either in the petition or in the evidence which may justify this court to raise the inference, which the learned counsel invites up to draw. A similar argument had been raised on behalf of the appellants in the trial court also and the learned trial Judge found that the allegation of the tampering of the record by Shakti Offset Works at the instance of the returned candidate had not at all been proved, much less satisfactorily. The trial court rightly found that the practice followed by all political parties for printing of voter cards and posters had always been such similar and the amounts for the purpose used to be spent by the political parties by sale of coupons and by receiving donations and even when respondent No. 2 had contested the election

as a Congress candidate the same practice had been followed. The election petitioners have failed to establish any link between the alleged expenses and the returned candidate for printing and distribution of voters cards and posters and have not brought any circumstance on the record to show that the returned candidate had any hand in the tampering of record or even that the tampering of the record was done for the benefit of the returned candidate only.

We wish, however, to point out that though the practice followed by political parties in not maintaining accounts of receipts of the sale of coupons and donations as well as the expenditure incurred in connection with the election of its candidate appears to be a reality but it certainly is not a good practice. It leaves a lot of scope for soiling the purity of election by money influence. Even if the traders and businessmen do not desire their names to be publicised in view the explanation of the witnesses, nothing prevents the political party and particularly a National Party from maintaining its own accounts to show total receipts and expenditure incurred, so that there could be some accountability. The practice being followed as per the evidence introduces the possibility of receipts of money from the candidate himself or his election agent for being spent for furtherance of his election, without getting directly exposed, thereby defeating the real intention behind Explanation 1 to Section 77 of the Act. It is, therefore, appropriate for the Legislature or the Election Commission to intervene and prescribe by Rules the requirements of maintaining true and correct account of the receipt and expenditure by the political parties by disclosing the sources of receipts as well. Unless, this is done, the possibility of purity of elections being soiled by money influence cannot really be ruled out. The political parties must disclose as to how much amount was collected by it and from whom and the manner in which it was spent so that the court is in a position to determine "whose money was actually spent" through the hands of the Party. It is equally necessary for an election petitioner to produce better type of evidence to satisfy the court as to "whose money it was that was being spent through the party. Vague allegations and discrepant evidence may only create a doubt but then the charge of corrupt practice cannot be held to be proved on mere lurking suspicion or doubts.

However, undesirable and objectionable the practice might be, the fact remains that the evidence led by the election petitioners in this case does not establish the charge levelled by them at all. In the absence of any cogent, reliable, satisfactory and trustworthy evidence to show that the respondent No. 1 or his election agent had incurred or authorised the expenditure as alleged in the petition, the trial court rightly found the issue

against the election petitioner and we find no reason to take a different view. We therefore, confirm the findings of the High Court on the said issue.

ISSUE 5 (b) (v).

In para 2.20 of the election petition it has been pleaded that respondent No. 1 had sent personal inland letters to all the voters residing within the constituency and the appellants had calculated the price of each such letter as Rupee One, inclusive of printing and postage. Two of such letters, Annexures 13 and 14, containing the residential address of respondent No. 1 allegedly received by Vijay Shinde and Vinayak God PW49 were annexed with the election petition. It was alleged that respondent No. 1 had made an appeal through the inland letters to the voters to cast their vote in his favour on 12-6-91. It was further stated that though the letters were shown to have been sent by Sarva Dharma Samajik Sangathan, the expenditure for the same was in fact authorised and incurred by respondent No. 1 himself. It was pleaded that there were 1240830 voters in the constituency and, therefore, respondent No. 1 was alleged to have incurred an expenditure of Rs. 12,40,830 on the inland letters and he had not shown the expenditure incurred by him in that behalf in the return of expenditure filed by him and if the said amount is included, it would show that the returned candidate had incurred and authorised expenditure beyond the prescribed limits and thus committed the corrupt practice under Section 123 (6) of the Act. In the written statement, the returned candidate denied the allegations and styled the same as imaginary and baseless. He denied to have sent any letter to Vijay Shinde and Vinayak Gode, Annexure 13 and 14 respectively or to anyone else in the constituency. The allegation that he had incurred an expenditure of Rs. 12,40,830 was vehemently denied. Respondent No. 1 state that according to the information received by him after the election, the Sarva Dharma Samajik Sangathan had got printed about two thousand letters similar to Annexure 13 and 14 and issued the same without his approval or consent and the entire expenditure must have been borne by the Sangathan itself since it was neither authorised nor incurred by him or by his election agent. It was stated that the allegation in the paragraph were vague and general in nature and lacked essential ingredients and particulars and the assertion that all the voters in the constituency had received the letters from respondent No. 1 was based on speculation and conjectures and not on facts.

In the original written statement filed by the returned candidate in reply to para 2.20, it appears that while he denied the "sending" of the inland letters identical to Annexures 13 and 14, there was no specific denial made by him regarding his signatures allegedly appearing on those

letters. In the amended written statement, a specific denial was also incorporated stating that the respondent No. 1 had not signed those letters and that inadvertently it had been omitted to be mentioned in the earlier written statement, while denying the sending of the inland letters. Thus, in the amended written statement there was denial both, about the signatures as well as the sending of the letters by the first respondent to the voters. Respondent No. 1 also denied to have incurred or authorised any expenditure in connection with the printing and postage of those inland letters.

Appellant No. 1 Bapat, appearing as PW1 in his statement asserted that each one of the voters in the constituency had received such an inland letter from respondent No. 1 but admitted during his cross examination that he had no idea whether the letters had actually been signed by the first respondent or by someone else. The petitioner also examined Shri JD Kotwal PW56 as the Hand-writing expert to identify the signatures of Respondent No. 1 on Annexures 13 and 14 (Ex. 79 and 80), and to compare the same with the admitted signatures of the first respondent. The Hand-writing Expert PW56, however, did not support the case of the election petitioner and deposed that no opinion could be expressed regarding the authorship or otherwise of the disputed signatures on Ex. 79 and 80 (Annexure 13 and 14). With the denial by respondent No. 1 that he had neither signed those letters nor sent any such letters to the elections and the evidence of the Hand-writing Expert PW56, the appellants must be held to have failed to prove that the letters like Annexures 13 to 14 were signed by respondent No. 1 or that he was responsible for sending those letters to the electorate. The argument of Dr. Ghatate that even if the letters had not been signed by respondent No. 1, but since the same had been sent as an appeal to vote for him, it should be presumed that he was the author and sender of the letters, does not appeal to us. The court can only decide the case on the basis of the evidence led and not on what ought to have been led. In the instant case, the election petitioners have failed to examine any witness to show that the letters (like Annexure 13 and 14) had in fact been sent by respondent No. 1 to the electorate. The letters were, on the face of it, sent by the Sangathan. No evidence has been led to show that the money spent by the Sangathan had been provided by respondent No. 1 either or that the Sangathan was a non-existent body. The allegation has remained totally unsubstantiated. It was certainly not obligatory for the returned candidate under the circumstances, to have produced any witness from the Sangathan to prove that Sangathan had sent the letters on its own or that it had also incurred the expenditure itself. Since, the case of the returned candidate categorically had been that those letters were

neither signed by him nor did he incur any expenditure in respect thereof, it was for the election petitioners to establish the charge by leading reliable and satisfactory evidence. The evidence of appellant Bapat PW1 to the effect that he had made inquiry from the Charity Commissioner and learnt that there was no such Sangathan registered with the Charity Commissioner, to urge that the Sangathan was a 'fake' organisation and was not a genuine society, ignores the fact that the registration of such a Sangathan is not necessarily to be done only with the Charity Commissioners. The petitioner admittedly made no inquiry from any other quarter to find out whether or not the Sangathan was in fact in existence or not. The intrinsic evidence of the document shows that the letters were sent by the Sangathan and keeping in view the evidence of the handwriting expert, it appears that the letters bore the name of "Datta Meghe" and not his signatures. The petitioner could have produced some witness from the Sangathan to show that no such letters had been sent by the Sangathan. The petitioners did not even summon a witness from the Sangathan along with the record. Had it been done if the summons could not be served because of the alleged non-existence of such a Sangathan, it may have been possible for the petitioner to argue that the Sangathan was a fake organisation and that an inference may be drawn that the letters had been sent by respondent No. 1 at his expense but no such inference can be drawn in favour of the appellants in view of the facts and circumstances existing on the record. Respondent No. 1 had disclosed the name of Shri Bhasme as one of the officers of the Sangathan in his testimony and the appellants should have sought permission of the Court to summon Shri Bhasme at that stage atleast but they did not do so for reasons best known to them. We are unable to agree with Dr. Ghatate, that the evidence should have been led by the returned candidate to prove that actually the letters had been sent by the Sangathan after incurring the expenses itself and the petitioners should not be expected to lead such evidence. The onus to prove the charge was on the election petitioners and in the absence of any satisfactory evidence adduced to discharge that onus, the returned candidate was under no obligation to prove that he was not responsible for committing the corrupt practice. Again, it is not the case of the appellants that the expenditure had been incurred by the Sangathan, with the consent of the returned candidate or his election agent nor is it their case that the returned candidate had undertaken to reimburse the expenditure incurred by the Sangathan. The trial court, in our opinion, after properly considering and appreciating the evidence rightly found that there was no evidence on the record to support the plea that the first respondent had spent the amount as alleged on the postage and printing of the inland letters of the type, Annexure 13 and 14 (Ex. 79

and 80) or that he had sent those letters to every voter in the constituency. From the material on the record, there is no scope even to raise a strong suspicion against the first respondent in that behalf. The appellants appears to be labouring under the wrong impression that once they make an allegation against the returned candidate, their responsibility is over and it is for the returned candidate to prove his innocence. It is against the essential principles of election law. At the risk of repetition it may be stated that where allegations of corrupt practice are alleged, it is for the election petitioners to prove the charge against the returned candidate beyond a reasonable doubt to the satisfaction of the court. The obligation of the returned candidate to rebut the allegations by leading evidence arises only after the election petitioners have led dependable evidence in support of the charge of corrupt practice and not till then. The appellants have in the present case failed to do so in respect of the charge relating to issue No. 5(b)(v) and accordingly we agree with the High Court that the returned candidate was not required to refute the charge by leading evidence on this behalf. The issue is accordingly decided against the appellants and we confirm the finding of the High Court.

Issue No. 5(b) (vi) & (vii)

These two issues relate to the publication of certain advertisements in various newspapers such as Nagpur Times, Nagpur Patrika, Nav Bharat Times, Tarun Bharat among others. There is some connection between these issues and issues 6(a), (b) and (c), which we shall deal with separately. According to the election petitioners, the returned candidate had opened an account with Nav Bharat Times, Nagpur Times and Nagpur Patrika and had incurred an expense of Rs. 4,89,424.00 for the publication of various advertisements in connection with his election in those newspapers but the said amount was not included in the return of expenditure and that had the same been included, the returned candidate would be shown to have incurred expenses beyond the permissible limits. The break up of the amount (Rs. 4,89,424.00) allegedly incurred or authorised by the returned candidate as given by the appellants is as follows:-

(1) Nav Bharat Times = Rs. 2,61,274.00

(2) Nagpur Times &
Nagpur Patrika = Rs. 2,28,150.00

It was alleged in the election petition that the returned candidate had an account, Code No. M-0042 (Ex. 441), with the Newspaper Nav Bharat Times and though it was shown that the expenses for the advertisements published in the newspapers were borne by Nagpur District Congress Committee, Granin Congress Committee and some other organisations and individuals, but in fact the payments had been made out of the amounts provided for by Respondent No. 1 to the said Commit-

tees, organisations and individuals. In the written statement Respondent No. 1 denied that he had incurred or authorised any expenditure himself or through his election agent in respect of the various advertisements appearing in Nav Bharat Times, Nagpur Times and Nagpur Patrika as alleged in the election petition. It was also denied that the advertisements had been published at the instance of or with the knowledge of Respondent No. 1 or that he had placed his funds at the disposal of the party and others to discharge the liability arising out of the publication of the advertisements.

We shall first take up the publication of the advertisements in Nav Bharat Times for which it is alleged that an expenditure of Rs. 2,61,274.00 was incurred or authorised by Respondent No. 1.

PW6 Narayan Gawalani the Manager of Nav Bharat Times while appearing as a witness for the election petitioner deposed that the newspaper receives advertisements through advertising agencies, organisations and individuals. The agencies which had released advertisements during the elections were Prasad Publicity, Yugdharm Consultants and Commercial Services (Y.C.C.S.). For Prasad Publicity and Y.C.C.S. they had a running account while Congress had no running account with Nav Bharat. He then explained how various advertisements appearing in the paper came to be published and disclosed the sources from which the same had come and also identified the person or party who had made payments in respect of those advertisements. He went on to depose that whenever the advertisements were received, they were entered in a register called the "RO Input Register" but the same had not been preserved and had since been destroyed. That there was no other proof pertaining to the receipt and publication of advertisements. He produced the lodger and proved various advertisements, release orders, bills etc. During his cross-examination, he was confronted with various receipts and he went on to say.

"None of the advertisements of which the total works out to Rs. 26690 as stated above were given by Datta Meghe. The payment also was not made by Datta Meghe for those advertisements, nor did he take responsibility for making these payments.

While explaining the document Ex. 407 and the existence of words "(Datta Meghe Election advertisements)" written in ink in the copy of Ex. 407, he expressed ignorance as to when or by whom those words were inserted in the office copy. He admitted that in respect of Ex. 409A, the words "Datta Meghe Account" did not appear in the original of the receipt but could not say as to who had written those words in the copy. The witness

in response to the question regarding the association of Respondent No. 2, with the partners of the firm stated:—

“I know Ramgopal Maheshwari, Prakash, Maheshwari. They are the partners of the firm which owns Nav Bharat. It is true that on many common social forums they and Respondent No. 2 Banwarilal Purohit are together. I do not know if they belong to the same community. It is not true that our management has forged the duplicates of receipt books at the instance of Banwarilal Purohit in order to bolster his false claim in the petition.”

The witness categorically asserted that “M 00042” is the code number of “Datta Meghe Election Advertisement Account” and that all payments against the said code number and account had been received from Nagpur Shahar District received from Datta Meghe or from anyone else received from Datta Megha or from anyone else on behalf of Datta Meghe.

PW7, Shri Sapre, Manager, Accounts of Nav Bharat Times, deposed that Manmohan Maheshwari is the Editor of Nav Bharat Times. That receipt Ex. 406 was issued first in the name of Datta Meghe but later on it was corrected to show the name of the party as Congress Committee and it was done under his instructions because it had been brought to his notice that payment had not been made by Datta Meghe but by Nagpur Shahar Indira Congress Committee. He went on to state that the original receipt Ex. 406-A was signed by Kulkarni. Explaining the difference in scoring of certain words in the carbon copy Ex. 406-A and its original Ex. 406-A, the witness stated that he had scratched the original name and substituted it with the name of Shahar Congress Committee. He, however, could not state as to who did the scoring in the original receipt Ex. 406-A, because the same had not been done by him. When his attention was drawn to a number of other receipts and their carbon copies and particularly the entries thereon, with a view to point out the difference between the entries in the originals and the copies, the witness stated that since receipts had been issued by different persons like Kulkarni, Prabhakar and others, he could not explain the reason as to why the corrections had been made but asserted that the corrections had not been made only in the case of the receipts concerning Respondent No. 1 but such corrections had been made also in respect of the receipts issued in favour of some other candidates and all such corrections were made in routine. The witness then categorically admitted :

“We do not have any personal account of the respondent No. 1 Datta Meghe in the account books. Except for the ‘Datta Meghe Election Advertisement Account’

there is no other account in Datta Meghes name. The receipt Ex. 406 was fully written by Kulkarni when it came to me, and it bore the two bill numbers, and that was also the case with original Ex. 406-A. I did not check up in whose names the two bills mentioned therein, stood. They have been checked by the Advertisement Department.”

PW8 Pannalal Poddar was working as an Assistant in the advertisement department of Nav Bharat Times at the relevant time. He deposed that a subsidiary ledger was being maintained in the advertisement department and that the bills which were prepared by the advertisement department were entered in the said ledger against the accounts of the concerned parties and that he used to maintain that register. He stated that at page 496 of the ledger, there exists an account in the name of “Datta Meghe Election Advertisement Account” and that the said account had been written up to page 498 under the same title. He stated that out of the writing “Datta Meghe Election Advertising Account” Nagpur, the words “Datta Meghe Nagpur” were in his handwriting but the remaining words “Election Advertisement Account” were not in his handwriting and he could not even identify the author of the words “Election Advertisement Account” in the above entry. He stated that entry regarding bill No. 9101007 of May, 1991 for Rs. 10,000/- stood originally in the name of Datta Meghe but that name was scored out later on but he could not say as to who had scored out the name and substituted the same by “Nagpur Congress”. That the scoring in the entries had been done in Bill Nos. 9101007, 9101343, 9101439 and 9101940 also by substituting the name of Datta Meghe with Nagpur Congress and Nagpur Shahar Zila Congress-I. He, however, did not know as to who had made the corrections or even the time when the same had been made or the reason why they had made. During his cross-examination, he admitted that there were neither any erasers nor corrections in the subsidiary register in regard to the four bills (above noted) and that the entries in that register had been made within 5 to 7 days of the issuing of the receipts. The witness specifically admitted that it “is not possible to say in referring to the account whether payment was received in this account through any other organisation except the Congress Committees.”

Respondent No. 1 appearing as R1W1 deposed that Parshionikar had been entrusted with the work of issuing advertisements on behalf of the Congress Committee. That Parshionikar was a man of his confidence. He denied that he had himself entrusted any job of publication of the advertisements in the newspapers to Parshionikar. He went on to add that he had not

asked Nav Bharat Times to open a separate account for his election advertisements and denied any knowledge whether Nav Bharat Times had opened any account as "Datta Meghe Account". He denied the suggestion that Account No. M-0042 had been opened by him initially in the name of "Data Meghe Account" but was later on converted, at his instance, to the name of "Datta Meghe Election Advertisements Account" to escape the rigours of law. He went on to assert that he had not given any advertisement to Nav Bharat Times nor had he paid any amount to the said paper.

Dr. Ghatate, learned counsel appearing for the appellants argued that since there was an account in the name of Datta Meghe, being Account No. M-0042, and admittedly the District Congress Committee had no account with Nav Bharat Times, the inference was obvious that the assertion of the returned candidate that neither he had issued any advertisements in Nav Bharat Times nor did he make any payment for the same or even agreed to reimburse the expenses incurred for the publication of the advertisements in the said paper was not correct. He submitted that the interpolations made in the copy of the receipt Ex. 406 and its original Ex. 406-A was a tell tale example of the tampering of the record by Nav Bharat Times with a view to help Respondent No. 1 to conceal the incurring of expenditure by him and that an adverse inference should be drawn that all the scoring etc. must have been done in various bills and receipts etc. by the employees of Nav Bharat Times only with a view to favour Respondent No. 1. In support of the argument, learned counsel pointed out that receipt Ex. 406 dated 17-5-1991 was initially issued in the name of Datta Meghe and subsequently in the original receipt Ex. 406A, where the name of the party had been initially left blank, the name of Congress Committee was written even though in the carbon copy, the name of the party continued to be shown as Datta Meghe which was also later on interpolated and substituted to read "Datta Meghe Election Advertisement Account". Learned counsel submitted that from the fact that the original receipt Ex. 406A, was produced during the cross-examination of the witness by the counsel for Respondent No. 1 the only explanation for the original receipt Ex. 406-A being found in possession of Respondent No. 1, could be that he had made the payment and kept the receipt, as otherwise there was no occasion for the original receipt to be found with the counsel for the returned candidate.

Thus, wherever it was found that the involvement of Datta Meghe could be proved, his name was scored off and replaced by Congress Committee etc. by Nav Bharat Times. According to Dr. Ghatate, even if Datta Meghe himself had not placed any order for issuance of any of the advertisements or directly made payment for the same to the newspaper, it was out of the funds provided by

him that the payments had been made and therefore the returned candidate would be deemed to have incurred the said expenditure. Though the arguments of Dr. Ghatate appear on the first blush to be attractive but they do not bear close scrutiny. Had receipt Ex. 406-A, which is the original of receipt Ex. 406 been with Respondent No. 1, containing a blank entry which was later on filled up as District Congress Committee showing it as the party making the payment, there was no reason why the same entry could not appear in the carbon copy Ex. 406, if the employees from Nav Bharat Times were out to oblige Respondent No. 1. The explanation given by the witnesses from Nav Bharat Times regarding the appearance of different names in the original and the carbon copy, cannot be said to be wholly unacceptable, particularly in view of the attendant circumstances. The possibility that interpolation was made in the copy of the receipt Ex. 406, to create evidence against the returned candidate also cannot be ruled out particularly in view of the association of respondent No. 2 with the management of Nav Bharat Times. If the original Ex. 406A contained the name of Congress Committee and the entry in the carbon copy had been left blank, it could have been filled up by adding the name of Datta Meghe. That apart, the receipts Ex. 406-A and its carbon copy Ex. 406 relate to payments made in respect of two bills based on two distinct release orders. Neither the correctness of the release orders, admittedly not issued by Datta Meghe, nor the authenticity of the relevant bills, which bills again had not been drawn in the name of the returned candidate, has been doubted by the appellants. Therefore, much capital cannot be made out of the difference of the entries in the original and the carbon copy of receipts Ex. 406-A and Ex. 406, when it is not disputed that Ex. 406 was actually issued in the name of Nagpur Shahar Indira Congress Committee. It is also pertinent to notice here that the appellants have led no evidence whatsoever to show that any order for advertisement had been placed by Respondent No. 1 himself or by his election agent with Nav Bharat Times in respect of either of the two release orders or bills. Not a single bill, out of the massive record produced by the appellants, is in the name of the returned candidate. There is not a single receipt of payment issued in the name of the returned candidate either. The witnesses appearing on behalf of the petitioners have categorically asserted with reference to the record that no amount had been paid by Respondent No. 1 for any of the advertisements published by them in their newspapers. The learned Trial Judge has elaborately considered various documents to which his attention was drawn and the arguments raised on the basis of the so-called interpolations etc. on some of the documents and concluded that there had been some errors in the mentioning of Code numbers in some receipts etc. but rightly found that the first respondent could not be held responsi-

ble for any of those interpolations. No evidence direct or circumstantial has been led by the petitioners to support the charges levelled against the returned candidate to the effect that the returned candidate had provided funds to the party and it was his money which was paid through the hands of the party. The allegation has remained absolutely unsubstantiated. As a matter of fact, the evidence led by the election petitioners instead of supporting their case, has to a large extent, demolished the same in as much as none of the witnesses have contradicted the assertion of the returned candidate that he incurred no expense, other than that which he had disclosed in the return of his election expense. The Trial Court therefore, rightly held that the expenses in respect of all the advertisements (subject matter of the issues) which were published in Nav Bharat Times could not be said to have been incurred or authorised by the first respondent. We find that the conclusion arrived at by the Trial Court is based on correct and proper appreciation of the evidence and learned counsel for the appellants has been unable to point out any flaw or error in the reasoning of the learned Single Judge of the High Court. We, accordingly uphold the finding of the High Court.

We shall now consider the allegations regarding the expenditure allegedly incurred in connection with the advertisements which appeared in different issues of Nagpur Times and Nagpur Patrika for the election of the returned candidate. It is not disputed that none of the advertisements were issued by the returned candidate himself nor any bill was drawn against him nor any payment was received from him. These advertisements appeared under different names. For example, the advertisements, Ex. 84|13 and 84|15 appeared in the name of a "Well Wisher". The bill for those advertisements, Ex. 474, was drawn by the Nagpur Times|Nagpur Patrika combined in the name of "Nitin Furnitures" and the receipt of payment, Ex. 475 was also drawn in the name of "Nitin Furnitures", Nagpur. Similarly, two advertisements dated 8-6-1991 published in Nagpur Times being Ex. 84|14 and 85|15, were published by "Punjab Woodcrafts". The bills in respect of the same were drawn in the name of 'Punjab Woodcrafts' for Rs. 15,000/- and the receipt, Ex. 477 dated 14-9-1991, also shown the name of M/s. Punjab Woodcrafts as the party who had made the payment. The advertisement issued in the Nagpur Times, Ex. 84|15 and in Nagpur Patrika Ex. 85|16 were again published by a "Well Wisher" and the bill Ex. 478 dated 30th June, 1991 for the said advertisement was issued in the name of "Ranjit Engineering Works" and the receipt, Ex. 479, for the same was also issued in the name of Ranjit Engineering Works (by mentioning its Code No. ICR-0436). Again, for the advertisements published in Nagpur Times and Nagpur

Patrika dated 10-6-1991, by a "Well Wisher", the bill was prepared in the name of "Talmale Bandhu" on 30th June 1991 and the receipt in respect of the said bill dated 14-9-1991 was also issued in favour of "Talmale Bandhu".

The appellants examined Shri Mahendra Bangarde PW 40 who was working as the Finance Manager with Nagpur Times since 1983. He stated that Ms. Neelima used to work as the Data Operator. She, however, was not examined by the appellant. He proved various entries in the ledgers, bills and receipts concerning publication of advertisements in the Nagpur Times. He did not state that any of those advertisements had been published either by Respondent No. 1 or by his election agent or that any payment in respect thereof had been made by Respondent No. 1 or his election agent nor even that respondent No. 1 or his election agent had taken the responsibility for making the payment for the concerned advertisements.

Santosh Sarode PW9 was working as the Manager General (Coordination) with the Nagpur Times at the relevant time and deposed that he knew about the advertisements which were published in Nagpur Times and Nagpur Patrika during the last Lok Sabha elections. He deposed that various advertisements which had appeared in the Nagpur Times in support of the election of the returned candidate had been published at the instance of Shri Parshoinkar, who had taken the responsibility for settling the bills in respect of those advertisements. He went on to say that it was at the asking of Shri Parshoinkar that bill

Ex. 474 for Rs. 15,000/- dated 30-6-1991 was drawn in the name of 'Nitin Furnitures'. The payment for the said bill was received on 14-9-1991 from Nitin Furnitures. He admitted that the Punjab Woodcrafts had an account with the Newspaper and that it was their representative who had requested them for the publication of an advertisement for which also Shri Parshoinkar had taken the responsibility for making payment and that later on Shri Parshoinkar had brought the amount and paid the same on behalf of Punjab Woodcrafts. The witness stated that according to his knowledge, Shri Parshoinkar was an office bearer of the Congress Committee and admitted that payments for some other bills also were made by Shri Parshoinkar on behalf of various parties as well as on behalf of the Congress Committee. Referring to the corrections made in the Code numbers appearing in certain bills, the witness stated that he had no knowledge as to who had made those corrections or overwritings and when the same were made but categorically asserted that all the payments had been made only by Shri Parshoinkar. The witness admitted that there was an account styled as "Datta Meghe,

Election Advertisement Account" with his newspaper and that the Nagpur Shahar District Congress Committee also had a separate account with his paper. Explaining the corrections made in respect of receipts No. 779, 825, 1026, 1356 which had been first shown credited in the account of "Datta Meghe Election Advertisement Account", the witness stated that it was the Nagpur Shahar District Congress Committee, who had asked the newspaper to publish the advertisements and had also undertaken the responsibility to make the payment for the same and since the said Congress Committee had also an account with them directly, they had transferred the "amounts" from "Datta Meghe Election Advertisement Account" to the account of Nagpur Shahar District Congress Committee, as the advertisements had actually emanated from the Congress Committee and payments had also been made by the Congress Committee. The witness explained that initially in their records all the amounts which were being received from Nagpur Shahar District Congress Committee as well as from Nagpur Gramin Committee were being credited in the Account of 'Datta Meghe Election Advertisement Account' but later on the same were corrected to accord with the actualities and credited in the appropriate Account of the party responsible for the advertisement and payments. The witness stated that since Shri Parshoinkar had brought the payments for the advertisements from the Nagpur Shahar District Congress Committee, Nagpur Gramin Congress Committee, Nitin Furnitures, Punjab Woodcrafts, Ranjit Engineering Works and Talmale Bandhu there had been some confusion about the mentioning of the Code Numbers in various receipts. During his, cross-examination, the witness categorically asserted that no payments were made by Datta Meghe for the advertisements which were released by Prasad Publicity nor had Datta Meghe taken the responsibility for making payments in respect of those advertisements. Thus, we find that according to the witnesses examined by the petitioners, neither Datta Meghe had issued any advertisement for publication nor had he made any payments in respect of the advertisements issued at the instance of different parties in the newspapers.

Respondent No. 1 during the course of his examination asserted :

"I had not asked any of the news papers to open an account in my name in respect of the advertisements, during the election period. Neither did I ask my election agent or any one else to open such an account on my behalf. I have no account in my name as Datta Meghe with any of the news papers, because I never asked such account to

be opened. I learnt yesterday that an account had been opened in my name by Janvad only yesterday. I do not know whether that account had been opened during the election period. It is not true that I had opened personal accounts in my name with Nav Bharat, Nagpur Times and Nagpur Patrika in relation to the advertisements during the election. It is not true that I had asked the entries which stood in my name to be transferred in the name of the Congress Committees. It is not true that I supplied the funds for publishing these advertisements to the Congress Committees, or the institutions of individuals who made the payments."

The assertion of the returned candidate finds support from the witnesses produced by the petitioners concerning the advertisements published in Nagpur Times and Nagpur Patrika.

The argument raised by Dr. Ghatate in respect of the advertisements published in Nagpur Times and Nagpur Patrika was only a repetition of the arguments raised on behalf of the election petitioners in the Trial Court. The learned Single Judge, after examining minutely various bills, receipts, advertisements and entries in the ledgers etc. as also analysing the oral evidence, came to the conclusion that the election petitioner had failed to establish the charge levelled against Respondent No. 1 to the effect that he was responsible for the publication of any of the advertisements or that he had incurred or authorised any expenditure himself or through his election agent or even that the funds allegedly provided by him had been utilised to discharge the liabilities. The High Court found that the returned candidate could not be connected with any of the interpolations or tampering with the record of the newspaper either and observed :

"The question, however, is whatever may be the reasons for the manipulation can the liability for manipulation be fastened on the first respondent. Merely because there was a change in the names in the bills and there was every good reason for the name of the first respondent, it had appeared in the original document being suppressed and there was a Datta Meghe Advertising Account 0056 in the book of Nav Samaj Ltd., it cannot be said that the first respondent's name had appeared in the original bill and that, that was removed and new names were substituted. The matter cannot rest merely on surmises. The persons, who had actually accepted the advertisements.

were not examined. Though Sarode's version. When it comes to be against the interest of the respondent No. 2, would have to be considered with more care and caution or disbelieving the version that the first respondent was not concerned with the advertisements some positive evidence was necessary. On the other hand, the positive evidence is that the first respondent had not given these advertisements and had not accepted the responsibility for these advertisements. None from Talmale Bandhu, Punjab Wood Craft, Ranjit Engineering Works and Nitin Furniture was called as a witness to show that they had not given the advertisements. If such evidence were led, then an inference could have legitimately been raised that since they had not given these advertisements, they must have been given by the first respondent, because he would be the person who would be really interested in advancing his own cause. Since, in the elections, several persons, on their own, may come forward for giving the advertisements, without any apparent motive, in the circumstances, though there is no reason to doubt the evidence that the names in the bills and the receipts issued by Nav Samaj Ltd. had been changed in order to conceal the real advertiser. I find that that evidence by itself is not sufficient to clothe the first respondent with the responsibility of giving the advertisements."

(Emphasis added)

We find ourselves in complete agreement with the above opinion of the High Court. Relevant witnesses were not examined by the election petitioners for reason best known to them. The appellants have offered no explanation, much less a satisfactory one, as to why those witnesses who were relevant and were likely to shed some light were withheld. The evidence led by the appellants is not only insufficient but also confusing, contradictory and often destructive of the case set up by the petitioners. We are hesitant, in the face of the evidence on the record, to take a view different than the High Court. On the basis of the above discussion Issue 5(b)(vi) & (vii), except to the extent we shall refer to certain items lateron, are held not to have been established by the election petitioners and the same are decided against them.

Issue No. 6 (a), (b) & (c)

In para 2.23A of the amended election petition the case projected by the election petitioners was that the returned candidate, respondent No. 1, had

got released various advertisements through Yug-dharma Consultants and Commercial Services for publication in the newspaper 'Tarun Bharat'. A Statement, Annexure 18-A, indicating the bills in respect of the advertisements allegedly released by respondent No. 1 in the said newspaper was filed and it was alleged that an amount of Rs. 2090.00 had been received by Tarun Bharat towards the advertisement expenses. It was pleaded that though some of the bills had been drawn in the name of respondent No. 1 himself and he had been shown to have settled those bills by making payments thereof, some of the other bills were fictitiously shown under the names of certain dummy organisations or individuals, though the payment in respect of each of those items of advertisements was also made by respondent No. 1 himself and/or by his election agent, Shri Sudhakar Deshmukh, during the period 25-4-1991 to 16-6-1991 and all that expense was suppressed from the return of election expenses. In Para 2.23B of the amended petition, it was pleaded that the advertisement details whereof were contained in Annexure 18-B and 18-C, had also been released for publication by respondent No. 1 himself and/or by his election agent or by the individuals/organisations and others under the authority of Respondent No. 1 and or his election agent to the daily newspaper Hitvada, through Orange City Advertising, Nagpur and Prasad Publicity, Nagpur respectively and an amount of Rs. 40,000/- and 23,520 had been paid to Hitvada towards the charges if those advertisements through Orange City Advertising and Prasad Publicity respectively. That even though the bills for the amount were drawn in the name of certain organisations, and individuals actually the payments in respect of each one of the bills, had been made by Respondent No. 1 himself and or his election agent, Shri Sudhakar Deshmukh, but the returned candidate had failed to include the said expenditure in the return of his election expenses.

In paragraph 2.23 C of the amended election petition, by reference to the statement contained in Annexure 18-D, detailing the advertisements released through Prasad Publicity to Tarun Bharat, it was pleaded that those advertisements had been issued by respondent No. 1 for publication in Tarun Bharat and an amount of Rs. 71,440 had been paid to Tarun Bharat towards the publication of said advertisements and even though some of the bills were drawn in the name of Respondent No. 1 himself and he made the payments thereof, the other bills had been fictitiously drawn in the name of certain organisations or individuals, though in fact the payment in respect of the same were made either by Respondent No. 1 himself or by his election agent Shri Sudhakar Deshmukh and that an expenditure of Rs. 71,440 in that behalf was not included by him in the return of election expenses.

The returned candidate in his written statement, while admitting the publication of some of the advertisements in Tarun Bharat, the expenditure

whereof he had shown in the return of election expenses, denied that he had been made the payments of Rs. 2090.00 to Tarun Bharat as alleged in paragraph 2.23A (Annexure 18A) or had even asked them to publish the concerned advertisements. He also denied that he had authorised or incurred an expenditure to the tune of Rs. 40,000.00 and 23,520.00 as alleged in para 2.23B of the amended election petition in respect of the items detailed in Annexure 18B and 18C. In reply to para 2.23C, the returned candidate denied to have incurred any expenditure himself or through his election agent or with his consent through any other organisation, association or individual for the advertisements, as itemised in Annexure 18-D, to the election petition. He asserted that no expenditure with regard to the publication of the alleged advertisements had been incurred or authorised by him and he categorically denied to have suppressed any amount from the return of his election expenses.

We shall first take up for consideration Issue No. 6(c) which concerns the publication of seven advertisements, which according to the election petitioners were issued by the election agent of Respondent No. 1, Shri Sudhakar Deshmukh and published on 18-6-1991 in Lok Mat, Lok Mat Samachar, Hitavard, Nagpur Times, Nagpur Patrika, Nav Bharat and Tarun Bharat. The said advertisements were "thanks giving" advertisements. The total expenditure incurred in respect of the same as alleged in the amended election petition was Rs. 39,500. Some of the advertisements were alleged to have been directly released to the newspapers by the election agent of Respondent No. 1 while others were alleged to have been released through Prasad Publicity.

According to Mr. Manohar, the learned senior counsel for the returned candidate the expenses involved in the publication of all these advertisements, even if accepted as true and assumed for the sake of argument to have been incurred or authorised by the election agent of Respondent No. 1, were not required to be included in the election expenses, as the said advertisements had been published after the declaration of the result and were not published during the crucial dates mentioned in Section 77 of the Act. According to Dr. Ghatate, on the other hand, since the advertisements had appeared in various newspapers on 18-6-1991, it would be reasonable to presume that the advertisements had been issued prior to mid-night between 17th June, 1991 and 18th June, 1991 and therefore the expenditure involved in the publication of these advertisements would be deemed to be an expenditure incurred in connection with the election and was required to be included in the return of election expenditure.

As already noticed, Section 77(1) of the Act mandates that a separate and correct account of all the expenditure in connection with the election, incurred or authorised by the returned candidate or by his election agent between the dates on which he had been nominated and the date of declaration of the results thereof, both dates inclusive, shall be maintained. The High Court, after a detailed discussion of the submissions made by learned counsel for the parties, which have been reiterated before us also,

came to the conclusion that all the seven advertisements for which the total expenditure of Rs. 39,500 was alleged to have been incurred or authorised by the election agent of the returned candidate were "thanks giving" advertisements and were published after the declaration of result and therefore they did not fall within the prohibitory limits of the time schedule prescribed in Sub-section (1) of Section 77 of the Act and were as such not required to be taken into account while computing the expenses incurred by the first respondents.

We are in agreement with the view of the High Court that the advertisements in question could not be said to have been issued in connection with the election, even if that expression is to be given a wide amplitude. What is it that the Legislature intended to achieve by prescribing the inner and the outer limits in Section 77 of the Act? Obviously, it was the elimination of money influence during the elections and maintaining of purity of elections. The expenditure incurred after the declaration of the result of the election can possibly have no nexus with the purity of the electoral process. The very fact that the advertisements thanked the electorate for electing Datta Meghe would show that the same could only have been issued for publication after the declaration of Datta Megha as the returned candidate. The expenditure incurred in that connection therefore cannot be said to be an expenditure 'authorised' or 'incurred' during the prohibited dates. Indeed, there may be cases where some expenditure can be incurred or authorised by a returned candidate in connection with his election, even after the declaration of the result, but unless that expenditure can be related to the process of election, authorised or incurred during the prohibitory limits set out in Section 77 (1) of the Act, it is not required to be included in the return of expenses. The mere fact that the advertisements appeared in the newspapers on the very next day cannot lead to any presumption that the expenditure in connection therewith had been incurred or authorised by the returned candidate during the prescribed prohibitory dates in anticipation of his being declared elected. We, agree and uphold the finding of the High Court that there was no nexus between the amount spent on thanks giving advertisements with the election after the declaration of the result of election and decide issue No. 6(c) against the election petitioners.

Issue No. 6(a) arises out of the allegations made in Para 2.13 of the election petition and the items contained in Annexures 17 and 18 to the petition. It deals with the advertisements allegedly issued by Respondent No. 1 through Ms. Yugdharma Consultants and Commerical Services, Nagpur (for short 'YCCS') to publicise his candidature. A chart containing 27 items of expenditure incurred in respect of various advertisements published on different dates in different newspapers in connection with the election of the first respondent were relied upon to urge that the advertisements had been released through two advertising agencies namely Yugdharma Consultants & Commercial Services (YCCS) and Prasad Publicity. According to the election petitioners Respondent No. 1 incurred an expenditure of Rs. 2,74,224 on the advertisements released

through YCCS but the said expenditure has been suppressed by the returned candidate and if included is the return of election expense, would show that the returned candidate had committed the corrupt practice as envisaged by Section 123 (b) of the Act.

That some of the advertisements had been published in various newspapers and had been released through YCCS or Prasad Publicity has not been disputed by learned counsel for Respondent No. 1 before us. His argument, however, is that neither Respondent No. 1 had authorised the publication of those advertisements through YCCS or Prasad Publicity nor had Respondent No. 1 or his election agent authorised or incurred the alleged expenditure of Rs. 2,74,224 in respect of those advertisements. The main thrust of the argument of Dr. Ghatate, appearing for the appellants, on the other hand was that in the release orders which had been issued by YCCS the name of "Datta Meghe" had been shown as the client and, therefore, it was futile to urge that respondent No. 1 or his election agent had not incurred or authorised the expenditure in connection with those advertisements. Reliance was placed on the advertisements which appeared in the issues of Lok Mat and Lok Mat Samachar dated 1-5-1991, 2-5-91, 3-5-91, 5-5-91, 6-5-91 and 21-5-91, being Ex. 83/2 to 83/6, 83/34, 83/35 and 83/91 to argue the expenditure in respect of the same had been incurred or authorised by respondent No. 1. We, however, find that the bills in respect of each of the aforesaid advertisements were admittedly issued in the names of persons, other than the first respondent. Those had been issued in the names of Sushila Bai Jadav; Nagpur Nagar Congress Committee; Yuvak Congress Committee and Supersteel Furniture etc. Even in respect of the advertisements which appeared in the issues of Yugdharma dated 1-5-91, 3-5-91, 8-5-91 and 11-5-91, the bills had admittedly been issued in the names of Nagpur Nagar Zila Congress Committee. The election petitioners sought to connect Respondent No. 1 with the advertisements issued through YCCS by pointing out that the name of Shri Datta Meghe had been shown as the client in those bills and, therefore, he alone must be presumed to have discharged the liability arising out of those bills either directly or by placing his funds in the hands of the parties in whose names the bills had been drawn. Reliance has been placed on the statement of Shri Madhukar Kishti, PW 55 by learned counsel for the appellants in support of his submissions.

Shri Madhukar Kishti, PW 55 was at the relevant time the Managing Director of Yugdharma Cooperative Society, the parent company, which publishes the daily Yugdharma run by Yugdharma Industrial Cooperative society. Yugdharma Workers Newspapers Pvt. Ltd. used to run the daily Yugdharma prior to it being taken over by the YCCS. It was Yugdharma Workers Pvt. Ltd., who had constituted YCCS in March 1990 as the sister concern for routing advertisements to different newspapers. PW55 deposed that he used to do whatever work was required to be done by the YCCS. He went on to state that YCCS released advertisements for publication for Datta Meghe's candidature for the Parliamentary Elections of 1991 to various newspapers and asserted that those advertisements were received by

them from Yuvak Congress Committee etc. Explaining as to how the name of Datta Meghe had appeared in certain release orders against the name of the client even though Datta Meghe had not released any of the advertisements, the witness stated that since the space had to be booked in relation to the election of Datta Meghe in various newspapers, the witness had, on his own mentioned the name of Datta Meghe against the name of the client for the sake of convenience, though Datta Meghe had not entrusted any advertisement to YCCS for publication. The witness added that he had not received any orders personally on behalf of YCCS from any of the clients of YCCS and that the orders used to be received by Shri Thakre Shri Prakash Deshpande. In his cross-examination, the witness, however, conceded that the name of Datta Meghe had been mentioned in certain release orders only because the name of the client had not been disclosed by the party and the space was required to be booked in the newspapers in advance owing to the rush of advertisements. Since, the advertisements were required to be published in connection with the election of Datta Meghe, he had shown his name against the name of the client on his own accord. PW55, further, admitted that neither any bill nor any receipt has been issued by the YCCS in the name of Datta Meghe. Thus, we find that PW55 does not advance the case of the election petitioners at all insofar as the allegations concerning issued No. 6(a) are concerned. Besides, this witness had no personal knowledge of the nature of the transactions on the basis of which the release orders came to be issued. The election petitioners had summoned various release orders and other record from this witness to connect the name of Datta Meghe but curiously enough they were neither exhibited nor got proved. The other witnesses, who could throw some light on the nature of the transaction, like Shri Thakre and Shri Prakash Deshpande, though summoned, were not examined on this aspect for reasons best known to them. The submission of learned counsel for the appellants that the explanation given by PW55 regarding the reason for the name of Datta Meghe appearing in some of the release orders is not satisfactory cannot help the appellants because there is no other evidence or explanation offered by the election petitioner. Even otherwise the explanation appears to be quite plausible. It was for the election petitioners to adduce better and cogent evidence, direct or circumstantial, to show that the returned candidate had incurred or authorised either himself or through his election agent the expenditure in respect of the advertisements issued by YCCS, as alleged in the petition, but no such evidence was produced and the allegation has remained unsubstantiated.

Shri Prakash Deshpande, PW11, the Deputy General Manager of Hityada did prove the signatures of PW55 on release order Ex. 586 dated 7-5-1991 but was silent about any transaction between YCCS and the first respondent. Same position exists in respect of other advertisements also. We need not, therefore, detain ourselves to refer to all other advertisements, their release orders, bills or receipts because from the evidence of PW55 it stands established that no payment for any of the advertisements issued by YCCS came from the returned candidate. Respondent No. 1 deposed that the advertisements had been issued by different parties, associations and individuals and

those parties had made the necessary payments. The petitioners have led no evidence to show that the advertisements which were issued under the names of different parties, organisations and individuals like Nagpur Nagar Congress Committee, Indira Brigade, Youth Congress, Phartiva Sher Sangathana, Vidharbha Professors Club etc. were in fact not issued by those parties, organisations, institutions or individuals, by examining any witness from such bodies and, therefore, the argument that the advertisements, though shown to have been issued by different parties and organisations etc., were in fact issued at the instance of the first respondent or that it was his money which they had paid to discharge the liabilities in respect of these advertisements, has no basis let alone any foundation. The election petitioners have totally failed to bring any material on the record to connect Respondent No. 1 either with the publication of or expenditure incurred in respect of the various advertisements as alleged in the petition. Even though the names of the parties, organisations, associations, institutions, and individuals etc. had been mentioned in the advertisements as the sponsors of the advertisements, the election petitioners did not examine any one of them to elicit from them that they had not issued or caused to be issued those advertisements or that they had not incurred any expense in connection therewith. We are not impressed with the submission of the learned counsel for the petitioners that since identical advertisements came to be issued simultaneously in different newspapers on the same date or on different dates, an inference should be raised that it was done only at the instance of the first respondent, because he alone was the beneficiary irrespective of different names of sponsors. The argument has neither logic nor any basis. The election petitioners led no evidence to even create a doubt about the identity of the sponsors and merely because identical advertisements appeared on the same date, it is not possible to hold that the sponsors were fictitious persons or that the actual sponsor was the returned candidate himself. It is not unknown that during the elections, many sympathisers as well as 'others' come forward to support the candidature of a particular candidate and sponsor and pay for the advertisements which they get published to further the prospects of that candidate's election. Moreover, apart from the returned candidate, the party which sponsors him as its candidate is equally interested in the furtherance of the prospects of his election and may approach different organisations, associations or individuals to sponsor and publish the advertisements at their expense in favour of the candidate and even to suggest to them that the same could be done by availing of the services of YCCS which was engaged in the propaganda cannot be ruled out. The burden of proving the issue was heavy on the election petitioners but they have miserably failed to discharge the burden. No evidence, direct or circumstantial has been led even to show that it was the money of the returned candidate which had been used by the party, other associations, institutions or persons, for the publication of the advertisements in various newspapers. The evidence on the record does not lead to any inference that it was the first respondent's money which was used for publication of advertisements and in the absence of such an evidence, no responsibility can be fastened on the first respondent in respect of the

expenditure incurred in connection with those advertisements. The learned trial Judge after a detailed discussion of various exhibits and taking into consideration the law on the subject concluded that :

.....
 "Datta Meghe's connection with the advertisements released by YCCS has not been established, and there is no other evidence to show that Datta Meghe either incurred or authorised the expenses for the advertisements released through YCCS, and all the advertisements, which have been issued through the agency of YCCS will have to be left out, while considering the expenses incurred or authorised by the first respondent Datta Meghe."

We are in complete agreement with the above conclusions and nothing has been pointed out before us to persuade us to take a different view. Issue No. 6(a) is, therefore, decided against the election petitioners.

Issue No. 6(b)

According to the allegations contained in para 2.23-A of the amended election petition, the returned candidate had, besides releasing advertisements through YCCS in various newspapers also utilised the services of Orange City Advertising, Nagpur and Prasad Publicity, Nagpur for publication of advertisements in connection with the furtherance of his elections in various newspapers. The details of the advertisements allegedly released by the returned candidate to the newspaper daily Hitvada through Orange City Advertising, Nagpur and Prasad Publicity Nagpur were provided in Annexure 18B and 18C attached to the election petition. The total amount alleged to have been spent by the returned candidate in that behalf was stated to be Rs. 40,000 and Rs. 23,520. In para 2.23-B the election petitioners averred that although, it appears from the Statements at Annex. 18B and 18C that the bills were issued in the name of certain organisations, the payments in respect of each one of the bills had in fact been made by respondent No. 1 himself and/or his election agent, Shri Sudhakar Deshmukh during the period from 25-4-91 to 16-6-91. It was alleged that the orders for each of the items of advertisements appearing in the statements at Annex. 18B and 18C were also placed by respondent No. 1 himself and/or by his election agent Shri Sudhakar Deshmukh or by the organisations and individuals as indicated in the statements at the instance and under the authority of respondent No. 1 or his election agent. Besides the election petitioners alleged in para 2.23-C that some more advertisements had been released by respondent No. 1 during 25-4-91 to 16-6-91 through Prasad Publicity in Tarun Bharat and an expenditure of Rs. 71,440 had been incurred therefor which was also not disclosed by the returned candidate in the return of his expense.

In the written statement, respondent No. 1 categorically denied that the advertisements detailed in Annexures 18B and 18C had been published or issued by him and asserted that no expenditure in that behalf had been incurred or authorised by him or by his election agent. It was denied that he had authorised and/or incurred an expenditure of Rs. 40,000 and Rs. 23,520 as itemised in Annexure 18B and 18C.

Similarly, it was asserted by the returned candidate that he had not placed orders for any of the advertisements detailed in Annexure 18D either himself or through his election agent nor had he authorised any of the organisations or individuals mentioned in Annexure 18D to get published the advertisements. It was maintained that no expenditure whatsoever with regard to the advertisements itemised in Annexure 18D were incurred or authorised by the returned candidate or by his election agent and therefore there was no question of disclosing the same in the return of election expenses. With regard to the advertisements allegedly released through Orange City Advertising, the learned trial Judge has noticed :

“With regard to Issue No. 6(b), the learned counsel for the petitioners stated that he would not be in a position to urge that the expenditure on the advertisements introduced by Orange City Advertising should be included in the expenditure incurred by the first respondent. I have already found that no other item of expenditure incurred through Prasad Publicity, except what has been included in issue No. 5(b)(vi) & (vii) can be included, and Issue No. 6(b) is answered accordingly.”

Learned counsel for the appellants has not disputed his above finding before us and as such we have no reason to take a view different than the one taken by the High Court.

We have dealt with in the earlier part of the judgment, the allegations relating to the expenditure incurred by the returned candidate through Prasad Publicity, while dealing with issues 5(b) (vi) and (vii). We shall now advert to the findings with regard to certain amounts which have been found to have been superseded by the returned candidate from the return of election expenses.

The election petitioners relied upon the testimony of Shri Anant Shastri PW50, who used to carry on the work of advertising agency in the name of Prasad Publicity. The witness deposed that he knew respondent No. 1 and that he had received advertisements for publication in the newspapers from several institutions with which respondent No. 1 was connected. Those institutions included Radhika Bai Meghe Memorial Trust ; Nagar Yuvak Shikshan Sanstha ; Polytechnic ; Engineering College ; Dental College ; Pharmacy and Medical College, being run by those institutions. That he had been releasing the advertisements on behalf of those institutions since 1984. He went on to add that payments had been received for the publication of the advertisements from various organisations as also from Nagpur Shahr Zila Congress Committee and entered in a ledger which, however, had been destroyed by him in the last week of March 1992. He stated that the account ledger had been destroyed by him before he had received the summons to appear in the court as a witness in the election petition. According to PW50 he did not himself write the account books and that the same were written by his accountant Shri Dhale. After referring to the Counter-foil book, PW50 deposed that ledger folio No. 226 pertained to the account of Yashwantrao Chauhan Social Forum and that counter foil No. 003363 from the same counter foil book also bore ledger folio No. 226 and was issued in the name of Datta Meghe Mitra 2275 GI/95—4.

Mandal. The word “staff which had been written below “Datta Meghe Mitra Mandal” in the copy had, however, been scored out later on. The witness went on to say that counterfoil No. 003364 also bore ledger folio No. 226 and was issued in the name of Nagpur Zila Congress Committee. Counterfoil No. 003365 which also bore ledger folio No. 226 was issued in the name of Narayan Ahuja while counterfoil No. 003366 with the same ledger folio No. was issued in the name of Rajiv Sena. The witness explained as to how the same ledger folio No. (226) appeared against various counter foils and stated that various organisations which had come forward to support the candidature of Datta Meghe and were releasing advertisements in his favour had been clubbed together under one and the same ledger folio No. 226. He denied the suggestion that the account against ledger folio No. 226 was of Datta Meghe and not of the organisations clubbed together.

The High Court after considering the evidence of Anant Shastri PW50 in great details opined that the witness was enjoying the patronage of the returned candidate and of various institutions with which the returned candidate was connected and that the witness had destroyed the ledger, a material document, “probably because those documents, if retained, would not have been favourable to the first respondent”. The High Court did not accept the explanation offered by Anant Shastri PW50 regarding the time and reason for the destruction of the ledger. The High Court replied the argument of learned counsel for the returned candidate that the release order of Prasad Publicity Ex. 225 relating to advertisement Ex. 88/1 was suspicious because the date 28-4-91 did not appear on the carbon copy Ex. 712, which had been produced by Anant Shastri PW50 presumably because the High Court felt that the witness was favouring the returned candidate. Similarly, the High Court did not accept the criticism made by learned counsel for the respondent in respect of release order No. 5031 dated 28-4-91 in which the name of Datta Meghe had appeared in the carbon copy, as the client, though there was no mention of the date 28-4-91 on it. The High Court noticed that though below the name of Datta Meghe, the word “Karyalaya” had been initially mentioned in Ex. 711, the manner in which that word had been written would show that the word “Karyalaya” might not have been written on 28-4-91 but on some other date. According to Shri Anant Shastri PW50 the advertisement dated 28-4-91 had been given to him by Shri Vasant Parshonikar on behalf of Nagpur Nagar Zila Congress and it was for publication of the programmes arranged by Nagpur Nagar Zila Congress Committee. That he had given identical advertisements to four newspapers including Nagpur Patrika and Lokmat. According to the witness, the word “Karyalaya” had been omitted from Ex. 325 inadvertently as he forgot to mention it. The witness, however, stated that Datta Meghe was not his client for the said advertisement and the words ‘Datta Meghe were used only as a caption and the actual bill was issued in the name of the real client : Nagpur Nagar Zila Congress Committee.

According to Shri Padmakar Paunikar PW3, bill Ex. 156 was issued to the party on 29-4-91 itself. It was signed by Bhojraj PW12 and the receipt Ex. 157

was also signed by Bhojraj PW12. He admitted that both the bills Ex. 156 and Ex. 227 were prepared on two different type-writers and both bore the signatures of PW12. He conceded that the three bills dated 29-4-91 were issued on three different formats. Ex. 156 was issued on the format of Nar Kesari Prakashan and disclosed Datta Meghe as the client and that advertisement had been released by Prasad Publicity Ex. 227 was on the format of Tarun Bharat and showed Yashwantrao Chauhan Forum as the party concerned; and Ex. 603 was again on the format of Tarun Bharat and showed Datta Meghe as the name of the client. According to PW12, the name of Yashwantrao Chauhan Forum was shown as client in Ex. 227 because they had asked for the bill in the name of Yashwantrao Forum when bill Ex. 227 was issued. The witness admitted that all the three bills were identical. The High Court dealt with this issue relating to the advertisement Ex. 88|1 which had appeared in Tarun Bharat for a sum of Rs. 1320 and observed :

"If one were to go only by the different formats on which the bills were issued and different names which appeared on the bills, it would appear that there was a good deal of confusion and on the basis of the bills themselves, no inference could be raised as to who was the real client. If regard is to be had to the fact that the original release orders mentioned the name of Datta Meghe as client, there was no reason for Tarun Bharat to depart from normal practice of issuing the bills in the name of Prasad Publicity by showing Datta Meghe as the client, and that seems to have been done with the bill (Ex. 156) issued purportedly on 29-4-91 on the format of Nar Kesari Prakashan. By that time, the forms of Nar Kesari Prakashan were being used. It would be only when a bill with a different name would be required that the change in the name would appear, and the only person, who was interested in having a bill in the name different from the one used in the release order, would be Prasad Publicity which was represented by Anant Shastri. To the extent that Datta Meghe's name appeared in the original release order, there is no demur even by Anant Shastri who was a party to the transaction. If his version that the name of Datta Meghe was mentioned merely as a caption was true, there was no difficulty for him to allow the name of Datta Meghe to continue in the original bills which were issued. Coupled with the position that all the original documents issued by Tarun Bharat are said to have been handed over by Anant Shastri to a person about whose identity he was not clear. It is difficult to accept the position that the name of Datta Meghe in the release orders issued to Tarun Bharat appeared merely as a caption."

The High Court then opined :

"In view of the above factum, there can be no doubt, though there was a deliberate

attempt to disguise the transaction, that the amount of Rs. 1320 under the bill Ex. 156 for the advertisement published in Tarun Bharat dated 21-4-91 (Ex. 88|1) on the basis of which the release order (Ex. 225), was paid by the first respondent under receipt Ex. 157, on 29-4-91."

After hearing learned counsel for the returned candidate at length and going through the record, in our opinion the finding recorded by the High Court is quite sound. The explanation for appearance of the name of Datta Meghe in the release orders does not appeal to common sense. Anant Shastri did not hand over the documents to a 'stranger' whose identity he could not recollect and admittedly he did not hand over the same to Shri Parshonikar. Thus, in the facts and circumstances on the record, the High Court was right in concluding that the expense for bill No. 156 in respect of advertisement Ex. 88|1 had been authorised or incurred by the returned candidate. Even the challenge to the said finding by learned counsel for the returned candidate before us was only half-hearted. We thus agree with the finding of the High Court and hold that the returned candidate did incur an expenditure of Rs. 1320 for Bill Ex. 156 in respect of the advertisement published in Tarun Bharat Ex. 88|1 but failed to include the same in the return of his election expenses. The High Court rightly included that amount to the amount disclosed in the return of election expenditure.

Coming now to the advertisement which appeared in the Election Special Issue of Tarun Bharat dated 21-5-91 and for which an expenditure of Rs. 7000 was alleged to have been incurred by the returned candidate, we find that the plea with regard to this advertisement was not raised by the appellants in the original election petition and was not even included in the first amended election petition but was introduced for the first time by an amendment dated 18-12-91. In the verification to the election petition, the contents of the relevant paragraphs were verified as 'partly based on personal knowledge and partly on information received from..... Tarun Bharat.....'. In the affidavit filed in support of the allegations of corrupt practice, again the contents of para 2.23 were verified as based partly on personal knowledge and partly on information received from the official record of Tarun Bharat. The election petitioner, however, did not in his deposition disclose the basis of his 'personal knowledge' for making the allegation. In the pleadings a wide latitude was left by the election petitioners to lead evidence on any of the various 'possibilities' detailed in the election petition. The 'vagueness' of the pleadings even after amendment shows that the election petitioners were out on a wild goose chase and trying to fish for evidence so as to be able to fasten some liability on the returned candidate or his election agent at least in some case. PW 39 Laxman Trimbakrao Joshi, the Chief Editor of Tarun Bharat was, examined by the election petitioners in support of the allegations made in the petition regarding publication of the advertisement in Election Special Issue of Tarun Bharat. He deposed that Tarun Bharat had decided to issue an Election

Special Issue after the elections were announced and that he had personally contacted Datta Meghe about 8 to 10 days before the publication of the issue on telephone and had a talk with Datta Meghe personally and had requested him for the issuance of an advertisement, as he was a contesting candidate Datta Meghe, according to the witness, had told him that he would think about the matter and admittedly, thereafter, did not get in touch with him. The witness went on to state that an advertisement in support of respondent No. 1 was published in Tarun Bharat dated 21-5-91. It had been received through Prasad Advertising Agency (Prasad Publicity) who had also supplied the material for publication. The witness, however, did not know whether the bill for the advertisement had been prepared in the name of Prasad Publicity or someone else nor did he know nor as to who had paid the bill. He did not even know as to who had instructed Prasad Publicity to give the advertisement or who made the payment for the same to the Prasad Publicity. This advertisement Ex. 221 is the subject matter of three bills Ex. 192 bearing No. 4167 (shown as Duplicate), Ex. 234 No. 4178 and Ex. 605, No. 4167 (written after scoring out 4178). All the bills are dated 21-5-91. Whereas in Ex. 192, which was on the format of Narkeshari Prakashan the bill was addressed to Prasad Publicity, showing Datta Meghe's name as the party releasing the advertisement, Ex. 234 was on the format of Tarun Bharat and again addressed to Prasad Publicity but showing NSUI as the client while Ex. 605 was issued on the format of Tarun Bharat and was addressed to Prasad Publicity and showed Datta Meghe as the client. The High Court after considering the evidence of PW3, Paunikar (who had deposed that Prasad Publicity had not placed the order); PW39 Laxman Joshi, (who had deposed that the advertisement was received from the Prasad Publicity that the bill had been settled by Prasad Publicity); PW50 Anant Shastri and PW12 Bhojraj, held that the advertisement had been issued by respondent No. 1 and that Anant Shastri PW50 had manipulated the bills and the record to help the returned candidate.

We have carefully perused paragraphs 154 to 157 of the judgement of the learned trial Judge dealing with the question of the expenditure of Rs. 7000/- in connection with the advertisement Ex. 221 in the Election Special Issue and the evidence on record. Keeping in view the difference in the bills relating to the same advertisement and the use of these different formats by Tarun Bharat, we find it difficult to agree with the High Court that the election petitioners have established that respondent No. 1 had incurred the expenditure of Rs. 7000/- in respect of publication of Ex. 221. The findings appear to be rather laboured ones and if Tarun Bharat advertising office was not "very careful about giving the particulars to the bills which they issued and that the bills were not issued from bound books" as observed by the High Court, no adverse inference could be drawn against the returned candidate. Indeed neither Shri Paunikar PW3 nor Bhojraj PW12 had any talk with Datta Meghe in respect of any of the advertisement and from the testimony of PW39 Laxman Joshi, it is not possible to hold that pursuant to the talk he had with the returned candidate, the advertisement in question had been published by the returned candidate himself and not by or on behalf of NSUI in whose favour the bill

had been drawn. As already noticed neither in the verification of the petition nor in the affidavit, PW39 had been disclosed as the source of information. The appellants have not explained the basis for making the said allegations. The findings of the High Court in our opinion are based on surmises and conjectures and we agree with Mr. Manohar, learned senior counsel for the returned candidate that in the face of the vague pleadings and inconclusive evidence led by the election petitioner coupled with the discrepant evidence of PW39, who admittedly was not shown as the source of information for the said allegation, it is not possible to hold that the advertisement in question, Ex. 221, had been released by and paid for by Datta Meghe himself. It is also relevant in this connection to note that no release order had been got produced by the election petitioners in respect of this advertisement which could disclose who the real client was. We, are therefore, of the opinion that the material on the record was not sufficient to fasten the liability for the publication of the advertisement in the Election Special Issue of Tarun Bharat Ex. 221 for Rs. 7000/- on the returned candidate. We, accordingly, set aside the finding of the High Court and hold that Rs. 7000/- was not spent by the returned candidate for the publication of Ex. 221.

The High Court also found that an amount of Rs. 9900/- in respect of Ex. 258 had been suppressed by the returned candidate from the return of his election expenses. The receipt Ex. 258 shows that an amount of Rs. 9900/- was paid on 20-5-91 by Sharad Pawar Mitra Mandal for the publications of the advertisement. A consolidated bill had been issued in the name of Sharad Pawar Mitra Mandal as the publisher. According to PW4, Ashok Jain, the advertisements which appeared in Lokmat and Lokmat Samachar Ex. 83|18 and 83|19 dated 12-5-91 against bill No. 257 had been given for publication by Narayan Ahuja and Sharad Pawar Mitra Mandal. The witness admitted that in the bill, the name of Narayan Ahuja was not mentioned and that the payment for the bill had been made by Sharad Pawar Mitra Mandal. From a careful consideration of the observations of the High Court in Paras 183 to 187, the pleadings and the evidence in that behalf, we find that recourse has been taken by the learned trial Judge to surmises and conjectures to hold that the expenditure had in fact been incurred by respondent No. 1 in respect of the said advertisement. There is not even an iota of evidence on the record to show that the first respondent had incurred the expenditure of Rs. 9100/- as alleged by the election petitioners in their evidence, though not specifically pleaded in their election petition both original and amended. The election petitioners had learned about the role being played by Narayan Ahuja even before they filed the election petition. It was for them to have examined Narayan Ahuja to elicit from him as to whose funds he was utilising for making payments for publication of various advertisements. The petitioners chose not to examine him for reasons best known to them. We do not think that there was any obligation on the part of the returned candidate to have examined Narayan Ahuja and had negative evidence to the effect that no funds had been provided to him by the returned candidate and that the payments had been made by the parties who were

responsible for the publication of various advertisements through him. The observations of the High Court that Narayan Ahuja was a person 'who had no financial or political background for representing organisation', is clearly based on conjectures because the evidence on the record does show that Narayan Ahuja had been working for the political parties and without there being any pleading or evidence on the record, it was to say the least rather unfair for the High Court to conclude that Narayan Ahuja had "neither any financial status nor any political background". We do not find it possible to agree with the High Court that the returned candidate had suppressed the amount of Rs. 9100/- in respect of Ex. 221 (receipt Ex. 258) and accordingly set aside the said finding of the High Court, which is not based on any satisfactory material on the record.

The finding of the High Court in respect of some of the items as detailed in Annexures 8 to 15, involving an expenditure of Rs. 22900, in our opinion are equally fallacious and conjectural. The same are not based even on correct appreciation of evidence. Recourse has been taken to surmises and imagination to return these findings. We find it difficult to subscribe to the view of the learned trial Judge which is not supported by any material on the record. The positive evidence led by the election petitioners is that the returned candidate had not himself or through his election agent given any of the advertisements for publication and had not accepted any responsibility for making payment in respect of any of those advertisement, even though the advertisement were issued for the furtherance of his election prospects. There is no direct or circumstantial evidence led by the election petitioners to show that the amount paid in the name of Sharad Pawar Mitra Mandal had been placed at the disposal of the said Mandal by the returned candidate or his election agent. There is no evidence even to suggest that respondent No. 1 had undertaken the responsibility of making the payments in connection with the expenses incurred by Sharad Pawar Mitra Mandal. The election petitioners, for reasons best known to them, chose not to examine any witness from Talmale Bandhu, Punjab woodcraft, Ranjit Engineering Works, Nitin Furniture, Sharad Pawar Mitra Mandal, D.M.M. Mandal and various other organisations under whose names either the advertisements had been published or who had according to the evidence made payments for those advertisements as per the bills and receipts on the record. If any evidence was led to the effect that none of the persons, parties or organisations had in fact issued the advertisements or they or anyone of them had denied the making of any payment, it may have been possible to argue that those advertisement may have been got published by the first respondent himself or through his election agent or through some other persons with his consent or with the consent of his election agent and in that event the onus may have shifted to the returned candidate to explain the source of the expenditure and in the absence of any satisfactory explanation it may have been possible to draw an inference that it was the money of the returned candidate. Since no such evidence was led and no proof was submitted in support of the alleged charge, the question, of shifting of onus on the returned candidate to prove his non-liability did not arise. The High Court, therefore, was not justified in

saddling the returned candidate with any expense other than Rs. 1320/- in addition to the expenses disclosed by him in the return of his election expense.

Thus, on the settled principles extracted in an earlier part of this judgement, we find that the election petitioners have miserably failed to discharge the onus of proving various charges levelled by them against the returned candidate regarding the commission of corrupt practice under Section 123 (6) of the Act. The High Court was justified in holding that the returned candidate had not committed any corrupt practice as envisaged by Section 123 (6) of the Act and in dismissing the election petition. However, the High Court fell in error in holding items of expenditure totalling Rs. 582,220 had been suppressed by the returned candidate and deserved to be included in the return of his election expense. Except to the extent of Rs. 1320/-, no other liability can be fastened on the returned candidate in respect of the other items of the alleged expenditure on publication of advertisements etc. The election appeal consequently fails and is dismissed with costs. The cross-objections to the extent indicated above succeed and are allowed. The costs are assessed at Rs. 10000/-.

Before parting with the judgement we would, however, like to express our disapproval of the manner in which amendments of the election petition were allowed on occasions more than once and how evidence was allowed to be brought on the record against the pleadings and settled legal principles.

Section 86 (5) of the Act deals with the amendment of an Election Petition. It lays down that the High Court may upon such terms as to costs or otherwise, as it deems fit, allow amendment in respect of particulars but there is a complete prohibition against any amendment being allowed which may have the effect of introducing either material facts not already pleaded or of introducing particulars of a corrupt practice not previously alleged in the petition. The first part of Section 86(5) of the Act, therefore, is an enabling provision while the second part creates a positive bar. Of course, the power of amendment given in the Code of Civil Procedure can be invoked by the High Court because Section 86 of the Act itself makes the procedure applicable, as nearly as may be, to the trial of election petition, but it must not be ignored that some of the Rules framed under the Act itself over-ride certain provisions of the Civil Procedure Code and thus, the general power of amendment drawn from the Code of Civil Procedure must be construed in the light of the provisions of the election law and applied with such restraints as are inherent in an election petition. It appears to us that the High Court did not properly consider the provisions of the election law while repeatedly allowing amendments of the election petition in the present case. The High Court allowed an application Ex. 27 filed by the election petitioner for permission to amend the petition on 28-11-91. Yet another application for amendment of the election petition, Ex. 44 was again allowed by the High Court on 18-12-91. The petitioner filed still another application, Ex. 47A, to again amend the election petition and the High Court allowed the same on 18-1-92. Even after the pleadings were completed and the issues framed on

21st of January 1992 and a part of evidence had been led by the parties, the High Court allowed one more application filed by the election petitioner No. 1, Ex. 701, and permitted an amendment of the election petition, apparently to bring the evidence in conformity with the pleadings. In the first place, the High Court ought not to have allowed evidence to be led by the election petitioners which was beyond the pleadings of the parties for no amount of evidence can cure a defect in the pleadings but it was all the more improper for the trial court to have allowed the pleadings to be amended so as to be brought in conformity with the evidence already led in the case. To say the least, it was not a desirable or a proper course to be adopted in an election petition where, as pointed out by this Court in Jagannath vs. Jaswant Singh (1954 SCR 892), the statutory requirements of the law of election must be strictly observed. Of course, since evidence was allowed to be led, though beyond the pleadings without any objections from the opposite side, the court could have evaluated and analysed the same to determine the worth of that evidence, which in the facts and circumstances of the case came under a cloud but to allow the amendment of the pleadings with a view to confer a 'legal status' on the evidence already led was to say the least improper. The reasons given by the learned trial judge to allow the election petitions to be amended repeatedly ignores the sanctity which is attached to the pleadings and the affidavit filed in support of an election petition, which under law is required to be filed within a prescribed time and those reasons do not impress us. We need say no more on this aspect of the case.

Sd.-

A. S. ANAND

Sd.-

M. K. MUKHERJEE

July 18, 1995

New Delhi.

नई दिल्ली, 14 सितम्बर, 1995

आ. अ० 63 --लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एनद्द्वारा 1991 की निर्वाचन अर्जी सं. 8 में विद्यमान पटना उच्च न्यायालय (पटना) का तारीख 28-6-1995 का निर्णय प्रकाशित करता है।

[सं. 82/बिहार/8/91/95]

आदेश से,

के.पी.जी. कुट्टी, सचिव

New Delhi, the 14th September, 1995

O.N. 63.--In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgment dated the 28-6-1995 of the High Court of Judicature at Patna in Election Petition No. 8 of 1991.

No. 82/BR/8/91/95]

By order,

K.P.G. Kutty, Secy.

Election Petition No. 8 of 1991

In the matter of an application under section 80-A and 81 of the Representation of People Act, 1951.
Vishwanath Kojriwal —Petitioner.

versus

Syed Shahabuddin & 16 others —Respondents

For the petitioner: M/s Anil Kumar Jha, Uma Shanker Pā., Shri Prakash Srivastva, Tarun Kumar Sinha Miss Mala Advocates.

For the Respondents: M/s R. S. Roy, S.C.I., S.N. P. Sharma, Yugal Prasad, Md. Abu Haidar & S.M. Iqbal, Hasan Rahmani, Advs.

PRESENT :

HON'BLE MR. JUSTICE ADITYA NARAYAN CHATURVEDI

A. N. Chaturvedi, J. These two petitions under Order 7 Rule 11 of the Civil Procedure Code read with sections 81, 83, 86 and 117 of the Representation of People Act, 1951 have been filed on behalf of respondent No. 1 for summary dismissal of the election petition. Out of these two petitions one was filed on 21-11-94 and the other on 12-12-94. Since the affidavit in support of the contents of the petition filed on 21-11-94 was somewhat defective, the other petition with proper affidavit was filed on 12-12-94. Rejoinder was filed on behalf of the election petitioner on 30-11-94 to the aforesaid petition filed on behalf of respondent No. 1 on 21-11-94. Since the affidavit in support of the contents of the rejoinder was found to be somewhat defective, second rejoinder was filed on 2-12-94.

2. A perusal of the aforesaid petition would show that respondent No. 1 has raised preliminary point regarding maintainability of the election

petition and wants summary dismissal of the election petition on the following grounds :—

(i) Seventeen copies of election petition (for seventeen respondents) duly attested to be true copies of the original election petition under signature of the election petitioner not having been filed at the time of presentation of election petition, there was non-compliance of the provision of section 81 (3) of the Representation of people Act.

(ii) Material facts and material particulars regarding the allegations made in the election petition in respect of miscounting of ballot papers not having been furnished, there was non-compliance of the provisions of section 83 of the Representation of people Act.

3. Since the question of maintainability of the election petition has been raised as a preliminary point, there is no escape from going into the merits of the aforesaid grounds taken by respondent No. 1. The first ground is regarding not filing of seventeen copies of election petition (for seventeen respondents) duly attested to be true copies of the original election petition under signature of the election petitioner at the time of presentation of the election petition as required by section 81 (3) of the Representation of people Act. In this connection the learned counsel for the election petitioner invited the attention of the Court towards para 35 of the election petition in which it has been stated that the election petition is accompanied by 17 attested true copies thereof duly signed by the election petitioner. On the other hand, the learned counsel for respondent No. 1 referred to para 42 of the written statement in which it has been stated that seventeen attested copies of the election petition duly signed by the election petitioner had not been filed. It may be pointed out that the statement in para 42 of the written statement to the said effect is not on affidavit. It may be further pointed out that the election petition was presented on 2-8-1991. In the order dated 2-8-91, there is no mention about filing or not filing of seventeen copies of the election petition in accordance with the provision of section 81 (3) of the Representation of people Act but in the office note dated 17-8-91 addressed to Stamp Reporter there is mention of seventeen attested true copies of the election petition. It was contended by the learned counsel for the petitioner that had seventeen copies of election petition not been filed in accordance with the provision of section 81 (3) the office in its note must have pointed out this fact and would have also mentioned about subsequent filing of the same. In this

connection the learned counsel also referred to the stamp report dated 26-8-91 which is to the effect that seventeen attested to be true copies of the election petition were there with the election petition. Respondent No. 1 has brought on record attested true copy of the election petition sent to any of the respondents for the purpose of showing that the same did not bear the same date as the original election petition and hence had not been filed on the date the election petition was presented. The learned counsel for respondent No. 1 could not point out anything either in the order sheet or in the office notes to show that the seventeen copies of the election petition had not accompanied the election petition rather had been filed subsequently. In view of all this there appears no merit in the ground that there was non-compliance of the provision of section 81 (3) of the Representation of people Act.

4. Now I will consider the second ground. According to respondent no. 1 material facts and material particulars regarding the allegations made in the election petition in respect of miscounting of ballot papers have not been furnished and hence there is non-compliance of the provision of section 83 of the Representation of people Act and that being so, the election petition is fit to be dismissed summarily. On the other hand, it was pointed out by the learned counsel for the election petitioner that section 86 (2) of the Representation of people Act provides for dismissal of an election petition for non-compliance of the provisions of section 81 or section 82 or section 117 of the Act but it does not provide for dismissal of election petition for non-compliance of the provision of section 83 of the Representation of people Act. In this connection the learned counsel for respondent No. 1 referred to decisions of the Supreme Court reported in A. I. R. 1972 S. C. 515 (Hardwari Lal vs. Kanwal Singh), A. I. R. 1987 S. C. 1577 (Dhartipakar Madan Lal Agrawal vs. Rajiv Gandhi) and A. I. R. 1986 S. C. 1253 (Ajhar Hussain vs. Rajiv Gandhi) and contended that even though section 83 does not find a place in section 86 of the Representation of people Act which authorises dismissal of election petition in certain contingencies, an election petition can be dismissed summarily in exercise of powers under Code of Civil procedure on the ground that the same does not furnish cause of action. It was further contended that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without material facts regarding alleged corrupt practice is not an election petition at all. The above mentioned decisions of the Supreme Court undoubtedly support the above

contentions of the learned counsel for the respondent no. 1 and I agree with the same.

5. Before I proceed to consider the pleas regarding not furnishing of material facts and material particulars regarding the allegation made in the election petition in respect of miscounting of ballot papers, it seems appropriate to restate as to what exactly is the content of the expression "material facts and particulars" which the election petitioner shall incorporate in his petition by virtue of section 83 (1) of the Representation of people Act. The settled position of law in this regard has been restated in the case of Ajhar Hussain versus Rajiv Gandhi reported in A. I. R. 1986 S. C. 1253 which is extracted below:—

(i) Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition (A. I. R. 1969 S. C. 734 Manubhai Nand Lal Amarsey versus Popatlal Manilal Joshi).

(ii) In regard to the alleged corrupt practice pertaining to assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded (A. I. R. 1972 S. C. 515 Hardwar Lal versus Kanwal Singh)

(a) Mode of assistance;

(b) measure of assistance; and

(c) all various forms of acts pertaining to the assistance.

(iii) In the context of an allegation as regards procuring, obtaining, abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following:—

(a) kind or form of assistance obtained or procured,

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election (A.I.R. 1972 S.C. 515).

(iv) The returned candidate must be told as to what assistance he was supposed to have

sought, the type of assistance the manner of assistance, the time of assistance, the person from whom the actual and specific assistance was procured (A.I.R. 1972 S.C. 515).

(v) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered (A.I.R. 1972 S.C. 515).

(vi) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars (A.I.R. 1972 S.C. 515).

6. The learned counsel for respondent no. 1 restricted his submissions to the allegations and facts mentioned in paragraphs 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 20(A), 20(B), (20C) and 21 to 32 of the election petition. In para 6 of the election petition it has been alleged that "so many bunglings and malpractices were perceived in favour of Janta Dal candidate i.e. respondent no. 1" during two rounds of counting of ballot papers on 16-6-91 leading to raising of objections by election petitioner and other candidates at every stage which were not considered. It was rightly contended by the learned counsel for respondent no. 1 that the words like "so many bunglings and malpractices were perceived in favour of Janta Dal candidate i.e. respondent no. 1" indicate too vague allegations. The nature and kind of bunglings and malpractices have not been given. The name of assembly constituency segment of the Parliamentary Constituency in which bunglings and malpractices were committed during counting has also not been given. Similarly the counting table numbers where the bunglings and malpractices were committed and the number of polling booths regarding the ballot papers of which bunglings and malpractices were committed during counting have also not been given. Copy of not a single objection has been annexed with the election petition though the petitioner and other candidate are alleged to have raised objections. Copy of alleged objections would have been contemporaneous documents. There is no averment to the effect as to how the election petitioner came to know about bunglings and malpractices as alleged in para 6 of the election petition. The affidavit in support of the contents of the election petition indicates that the contents of the election petition are based on information derived from the record and to the personal knowledge of the election petitioner but no document has been

referred to in support of the alleged bunglings and malpractices. So the pleading in para 6 does not set out the material facts and is vague and, therefore, constitutes an incomplete cause of action.

7. In para 7 of the election petition it has been alleged that counting was done on 15 counting tables in each of the six assembly constituency segments where counting agents of the candidates had been deputed. It has been further alleged that there were six central tables where Assistant Returning Officers with 3 to 4 Government staff had been deputed for checking doubtful votes and the previous counting but only two chairs were kept at central tables for the counting agents of the seventeen candidates so that the agents may not check the manipulations and as such everything was going on smoothly as per the officers' choice who were totally guided by ministers of Bihar Government. As is apparent, even the allegation in para 7 of the election petition is vague and does not contain material facts namely the names of the ministers and the names of the persons who were doing manipulations as per choice of the officers and the guidance of the ministers. So even the pleading in para 7 suffers from lack of material facts and is vague.

8. The pleading in para 9 of the election petition is as follows :—

That after each round of counting the supervisors used to prepare a chart in the prescribed Form No. XVI in which was recorded the details of votes received by the candidates on each of the booths, and was then sent to the Assistant Returning Officer for checking and signature. Here no verification was ever found to be done by the A.R.O. The supervising table was the main point for bungling in tableting the records, where 25 thousand votes were deleted from the petitioners A/C and the same were added in the A/C of respondent no. 1. This fact was detected by the petitioner's election agent Sri Jwala Pd. Gupta but none of his objections was entertained.

9. As is apparent the allegation made in para 9 of the election petition is also too vague and is of general nature. Though the election petitioner has mentioned a round figure like deletion of 25,000/- votes of the election petitioner and adding of the same in favour of respondent no. 1, but he has not given the material facts, namely, names of the assembly constituency segments to which the said 25,000/- votes appertained and break up of the said 25,000/- votes. He has also not given counting table number, round number and number of booths to which the said 25,000 votes appertained. The source from which the election petitioner came to know the aforesaid irregularity in counting has also not

been disclosed. Of course, it has been stated that the aforesaid irregularity was detected by his election agent Sri Jwala Pd. Gupta but there appears no affidavit of Jwala Pd. Gupta to the effect that he had told the election petitioner about the said irregularity in counting. It would not be out of place to mention here that in the affidavit the election petitioner has mentioned that the allegations contained in para 9 are based on information but he has nowhere stated that he got the information regarding the said irregularity from his election agent Jwala Pd. Gupta. The name of any counting agent who was present at the time of Commission of the said irregularity in counting has also not been disclosed in the election petition. The basis on which the said figure was arrived at has not been disclosed. There was no contemporaneous document to support the said allegation. Under the circumstances the pleading in para 9 does not set out any material fact and, therefore, constitutes an incomplete cause of action under section 123 (7) of the Representation of People Act.

10. The learned counsel for election petitioner referred to the decision of Rajasthan High Court in the case of Brij Sundar Sharma versus Shri Ramdutta and others reported in A.I.R. 1964 Rajasthan 99 and contended that averments made to the effect that about 100 ballot papers marked in favour of respondent were improperly rejected by the Returning Officer, that some invalid ballot papers were counted for the petitioner and that some ballot papers marked for the respondent were counted for the petitioner were held to be not vague and hence the round figure of 25,000 ballot papers given by the election petitioner in the instant case cannot be said to be vague. In this connection the learned counsel for respondent no. 1 referred to the decision of the Supreme Court in the case of Shri Jitendra Bahadur Singh versus Krishna Bihari and others reported in A.I.R. 1970 S.C. 276 and pointed out that with regard to certain figures given in that case by the election petitioner it was pointed out by the Supreme Court that basis for arriving at those figures had not been disclosed and that being so, there was lack of material facts supporting the allegation. In view of this it is difficult to rely on the said decision of Rajasthan High Court.

11. The learned counsel for the respondent no. 1 further referred to the decision of the Supreme Court in the case of Shri Jitendra Bahadur Singh versus Sri Krishna Bihari & others reported in 1969 (2) S.C.C. 433 (equivalent to A.I.R. 1970 S.C. 276) and pointed out that in the said decision it has been held that if an election petitioner gives some figures as to rejection of valid and acceptance of invalid votes, the same must not be considered as an adequate statement of material facts. It has been further held

in the decision that material facts required to be stated are those facts which can be said as materials supporting the allegations made. In otherwise, they must be such facts as afford a basis for the allegation made in the petition. It was further pointed out that on applying the aforesaid test given by the Supreme Court the contents of the said para 9 of the election petition do not furnish a single material fact.

12. The averment regarding corrupt practice in the matter of counting of ballot papers as contained in para 10 of the election petition read thus :—

That in cases where the A.R.O. found himself unable to decide a doubtful case, he used to send the same to the R.O. who decided the cases when available at the counting spot. The main bungling of illegal, bogus and disqualifying votes were always avoided by the R.O. and as such respondent no. 1 was benefited.

13. A perusal of para 10 shows that the same contains merely vague allegation, namely, "the main bungling of illegal, bogus and disqualifying votes were always avoided by R.O. and as such the respondent no. 1 was benefited". Para 10 does not contain the material facts like the nature of bungling of illegal bogus and disqualifying votes and the manner in which the respondent no. 1 was benefited thereby.

14. The allegation as contained in para 12 of the election petition reads thus :—

That about 14 to 13 rounds of counting took place in every assembly constituency and in every round on every supervising table of each assembly constituency about 5 to 9 hundred votes were manipulated in favour of Syed Shahabuddin, respondent no. 1 under pressure of 5 Janta Dal ministers who were deputed to look after the election of Shri Shahabuddin and to see him elected.

15. As is apparent, the allegation as contained in para 12 is also too vague and does not contain the material facts. The election petitioner has not mentioned the material fact as to how he came to know that about 5 to 9 hundred votes were manipulated in favour of respondent no. 1 in each round of counting at every supervising table. He has not disclosed the source of information. He has also not annexed any document to the election petition in support of the allegation to the said effect. He has also not named the five Janta Dal ministers who had been allegedly deputed to look after the election of respondent no. 1 and to get him elected. Though in his affidavit in support of the contents of the election petition he has stated that the allegation contained para 12 is based on information but he has failed to disclose as to from whom he got the information to

the said effect. Under the circumstances the allegation as contained in para 12 is too vague and does not set out the material facts and, therefore, constitutes an incomplete cause of action under section 123 (7) of the Representation of People Act.

16. The allegation as contained in para 13 of the election petition runs thus :—

That final tabulating was done on R.O.'s subordinate table and here too no candidate agent was allowed to see the records. Everything was done secretly and confidentially. Final result records were prepared on this table but no result was ever announced by the R.O. after 2nd round of counting which always created a doubt.

17. As is apparent, the allegation in para 13 is too vague and of general nature and does not contain material facts like the names of the counting agents of the candidates who were not allowed to see the record. The election petitioner has not disclosed any contemporaneous document supporting the allegation to the said effect. Under the circumstances the pleading in para 13 of the election petition suffers from the lack of material facts.

18. The allegation in para 14 is that R.O. and the A.R.Os. along with their staff were doing the counting work under pressure of Bihar Government ministers and so many bungs, irregularities and manipulations were done to ensure the victory of respondent no. 1 and even the Election Commission's orders were totally neglected. As it appears, the allegation to the said effect is devoid of material facts regarding the nature of bungs, irregularities and manipulations. The election petitioner has not disclosed the names of the ministers under whose pressure bungs, irregularities and manipulations were done. It has also not been made clear as to which orders of the Election Commission were neglected. There appears no contemporaneous document to support the said allegation. The allegation as contained in para 14 of the election petition does not set out material facts.

19. In para 15 of the election petition it has been alleged that many of the votes which should not have been counted at all in favour of respondent no. 1 were illegally counted in his favour inspite of the repeated objections by the counting agents Sri Mahesh Pansari, Ratan Kumar Saraf, Sikandar Singh and others. As will appear even the allegation in para 15 is vague as there is absence of material facts like name of assembly constituency segments, counting table number, found number, name and number of polling booth and also the nature of ballot papers which were illegally counted in favour of respondent no. 1. Though the aforesaid counting

agents are said to have objected to the counting of such votes in favour of respondent no. 1 but copy of objection petition filed by any of them has not been annexed to the election petition. In the affidavit in support of the contents of the petition it has been stated that statement made in para 15 is derived from record and to the personal knowledge of the election petitioner but strangely enough no paper or record has been annexed to the election petition in support of the allegation contained in para 15 of the election petition.

20. In para 16 of the election petition it has been alleged that during counting objections were repeatedly raised by the candidates and their agents but in a very calculated and deliberate manner all objections were ignored by the A.R.O. in absence of the R.O. who was not always available on the counting spot and this was done to facilitate the victory of respondent no. 1. As will appear, the allegation to the said effect in para 16 of the election petition is also vague. Not even a single copy of the so called objections has been annexed to the election petition. The name of the candidates and their agents who as per allegation had raised objections have also not been disclosed. That being so, the allegation in para 16 does not set out the material facts and suffers from lack of material facts.

21. The allegation as contained in para 17 runs thus:—

That in the 1st and 2nd rounds of counting the following manipulations, bunglings and illegalities were detected which clearly show that duplicate ballots were changed packed in other ballot boxes anytime after polling and before counting in place of original ballots polled. Objections were raised by all the candidates and their agents but were ignored. So all the candidates with their agents except the petitioner with his agents and Janta Dal, boycotted counting and left the place:—

The details of alleged manipulations, bunglings and illegalities have been given in subparas I to IX of para 17 which I will discuss hereafter.

22. The allegations as contained in subparas I to IX of para 17 are also too vague as they do not contain material facts in support thereof. Though in sub-para I it has been alleged that ballot papers were found arranged in bunches, tagged with rubber in about 15 to 20 boxes but material facts like the name of assembly constituency segment and the name and number of booths to which the same appertained have not been disclosed. In sub-para II though it has been alleged that about 15 to 20 ballot

boxes were found unsealed and no paper seal bearing the signatures of the Presiding Officer and the polling agents was found intact but the boxes were opened and paper seals were destroyed so that the same may not be verified in checking. With regards to this allegation also the material facts like the name of assembly constituency segment and the name and numbers of the polling booths to which the ballot boxes appertained have not been disclosed. As per the allegation in sub-para III ballot papers were found unsigned by the Presiding Officer in about 10 boxes. Even with regard to this allegation the material facts like the name of assembly constituency segment and name and number of booths to which boxes appertained have not been disclosed.

23. Though in sub-para IV it has been alleged that ballot papers of about 50 booths were found bearing seal mark in either green or grey or black ink besides the ink mark prescribed by the Election Commission and thereby showing that duplicate ballot papers had been inserted in the ballot boxes after the polling, but the names of the assembly constituency segments or the names and number of booths to which the ballot papers appertained have not been disclosed and thus the allegation in sub-para IV suffers from lack of material facts. In sub-para V it has been alleged that ballot papers in about 4 to 5 ballot boxes bore different type of seal in place of seal supplied by the Election Commission for the purpose. Even with regard to this allegation the material facts like the name of the assembly constituency segments and the name and number of booths to which the ballot boxes appertained have not been disclosed. In sub-para VI the allegation is to the effect that ballot papers in large quantity having different colours, weight and print were detected which were not tallying with original ballot papers supplied by the election authorities. With regard to this allegation also the material facts like names of assembly constituency segments, names and number of booths to which the ballot papers appertained have not been disclosed. It has also not been disclosed as to in which round of counting and at which counting table number such ballot papers had been detected.

24. In sub-para VII it has been alleged that ballot papers having seal mark on the same point were detected in large quantity and this could have been possible only when the seal marks had been affixed by one and the same person or by some machine. Even this allegation is vague as the material facts like the number of such ballot papers, the names of the assembly constituency segments and the name and number of booths to which such ballot papers appertained have not been disclosed. Similarly the round number and counting table number at which such ballot papers were found have also not

been disclosed and that being so, even the allegation contained in sub-para VII suffers from lack of material facts. In sub-para VIII the allegation is to the effect that large number of ballot papers not having the same serial numbers as issued by the election authorities for the booth concerned had been detected. This allegation is also too vague as the material facts like the name of assembly constituency segment name and number of booths to which ballot papers appertained the round number and counting table number at which such ballot papers were found have not been disclosed. In sub-para IX it has been alleged that the signature of the Presiding Officer on the ballot papers of about 50 to 60 booths were not tallying. Even this allegation is too vague as the name and number of the booths and the name of the assembly constituency segments to which said booths appertained have not been disclosed. As is apparent, the allegation as contained in sub-paras I to IX of paragraph no. 17 are too vague as they do not contain the material facts in support of the allegations contained therein. There is also no contemporaneous document to support the allegations.

25. The allegation as contained in para 18 of the election petition runs thus:—

That objections were raised on all defective, illegal and disqualifying ballots and ballot boxes sealing but the Asst. Returning Officers and the Returning Officer did not entertain any of the objections and counted all votes saying that they have no power to reject or disqualify such huge quantity of invalid ballots. They entertained only 5-6 cases as the Returning Officer-cum-District Magistrate was doing all this under the guidance and pressure of Bihar Govt. Ministers to make respondent no. 1 successful.

26. As is apparent, the allegation as contained in para 18 of the election petition is also vague as the same does not contain material facts. The names of the ministers under whose guidance and pressure the Returning Officer had acted as alleged in make the respondent No. 1 successful have not been disclosed. Though 5 to 6 objections in this regard are laid to have been entertained by the R.O. but copy of any such objections does not appear to have been annexed with the election petition. It has also not been disclosed as to how the petitioner had come to know about the allegation as contained in para 18 of the election petition. In the verification and affidavit of the election petitioner it has been stated that statements as contained in para 18 of the election petition are based and derived from record and to the personal knowledge of the petitioner but it is not clear as to which part of the allegation is based on record and which part of the allegation is based on personal knowledge. So even the allegation contained in para

18 of the election petition suffers from lack of material facts.

27. The allegation in para 19 is as follows:

That the point to notice is that the R.O. and the A.R.Os right from the beginning had adopted a favourable attitude towards respondent no. 1 as such everything was decided to ensure his victory by hook or by crook. On account of this conspiracy the petitioner who, in fact, was the victorious candidate, was denied his victory by a margin of 79628 votes only. In fact, when the final result sheet was prepared it was the petitioner who should have been declared elected but illegally counting more than one lac votes in favour of respondent No. 1 the R.O. ensured the victory of respondent no. 1.

28. As it appears, the allegation as contained in para 19 of the election petition is highly imaginary and does not contain single material fact in support thereof.

29. In para 20 of the election petition it has been alleged that on many booths respondent No. 1 had indulged in corrupt practices with his supporters. It has been further alleged that it was the petitioner who had majority of valid votes in his favour and had there been no bunglings, irregularities and manipulations in counting, he would have been declared elected. It may be pointed out that booth numbers at which respondent No. 1 and his supporters had indulged in corrupt practices have not been disclosed. The names of the assembly constituency segments to which the booths appertained have also not been disclosed. The names of the supporters of respondent No. 1 have also not been disclosed. So the allegation to the effect that respondent No. 1 and his supporters indulged in corrupt practices at many booths is vague and suffers from lack of material facts. Even the nature, mode and manner of corrupt practices have not been disclosed. What is the basis for saying that the petitioner had obtained majority of valid votes in his favour has also not been disclosed. So the allegation in para 20 suffers from lack of material facts.

30. In para 20 (A) it has been alleged that after 2nd round of counting the petitioner was declared winning by 600 votes by all India Radio and from here the manipulations in favour of respondent No. 1 started and in every round of counting about 500 to 900 votes were added in favour of respondent No. 1 to ensure his victory. It has been further alleged that the counting authority and the ministers of Bihar Government estimated that even after replacement of about one lac votes by changing the ballot boxes, respondent No. 1 was defeated by 600

votes in the 2nd round and hence the authority started manipulations in favour of respondent no. 1 under pressure of ministers. As is apparent, the allegations as contained in para 20 (A) are also too vague and suffer from want of material facts. What is the basis for saying that 500 to 900 votes were added in favour of respondent no. 1 in every round of counting after the 2nd round has not been disclosed. Similarly the basis for saying that the counting authority started manipulations under pressure of ministers has also not been disclosed. The names of ministers who were pressurising the counting authority, the source of information regarding replacement of about one lac votes by changing the ballot boxes to ensure the victory of respondent no. 1 have also not been disclosed. So the entire allegation as contained in para 20 (A) is too vague and suffers from lack of material facts.

31. The allegation in para 20 (B) runs thus:—

That it is reliably learnt that three days before counting started, the R.O. had to fill the elected candidate's certificate in the name of Sri Syed Shahabuddin under pressure of the Chief Minister as such the R.O. had to declare respondent no. 1 elected by doing any illegality or irregularity by hook or by crook to save his service as well as the prestige of the Chief Minister.

32. As is apparent, the allegation in para 20(B) is also too vague. The source of information has not been disclosed. Though in para 20(B) of the election petition it has been alleged that the elected candidate's certificate in the name of respondent no. 1 was filled up three days prior to start of counting under pressure of the Chief Minister but the pleading in para 2 of the election petition shows that respondent no. 1 was declared elected on 18-6-91. In view of this it was contended on behalf of respondent no. 1 that the allegation to the effect that the elected candidate's certificate was filled up by the Returning Officer three days prior to the counting of the votes is absurd. The nature of the illegality and the manner in which the same was done by the Returning Officer has also not been disclosed. Under the circumstances the allegation in para 20(B) also suffers from lack of material facts.

33. The allegation in para 20(C) runs thus:—

That though there were sufficient officers to look after the election of 23 Kishanganj Parliamentary Constituency, even then the Bihar Govt. posted 140 officials from Patna on 19-5-1991 for petrolling at the time of poll and carry the ballot boxes from the polling station to the strong room for depositing the ballot boxes only in Kishanganj Parliamentary Constituency but most

of the ballot boxes were deposited by them till next day afternoon. It is reliably learnt that about 500 ballot boxes in 300 booths were completely changed by these officials with the help of the Janta Dal workers on the way till the same were deposited in the strong room. This complaint was raised by Sri M.J. Akbar, respondent no. 2 before the Election Commissioner before counting.

34. No contemporaneous document is annexed with the election petition in support of the allegation that 140 government officials were sent from Patna on 19-5-91 for patrolling at the time of poll and for carrying the ballot boxes from the polling stations to the strong room. Similarly, what is the basis for saying that most of the ballot boxes were deposited in the strong room by the officials deputed from Patna till the next day (afternoon) has not been disclosed. What is the source of information for saying that about 500 ballot boxes appertaining to 300 booths were completely changed by the officials deputed from Patna with the help of Janta Dal workers has also not been disclosed. The name of such officials and Janta Dal workers has also not been disclosed. Sri M.J. Akbar (respondent no. 2) is alleged to have lodged complaint before the Election Commission with regard to the aforesaid bunglings but there is no affidavit by Sri M.J. Akbar to support this allegation. Under the circumstances even the allegation in para 20(C) suffers from lack of material facts.

35. As regards the statements made in para 21 of the election petition it was pointed out by the learned counsel for respondent no. 1 that the same are by way of submission in the context of the allegations made in earlier paragraphs.

36. In para 22 of the election petition it has been alleged that no polling account was supplied to the polling agent even on demand barring a few. In this connection it was pointed out by the learned counsel for the respondent no. 1 that this petition under Order, Rule 11 C.F.C. read with sections 81, 83, 86 and 117 of the Representation of People Act is with regard to not furnishing of material facts and material particulars regarding the allegations concerning mis-counting of ballot papers and is not with regard to the polling. However, it was pointed out that names of the polling agents who had demanded polling account have not been disclosed and in this way the allegation in para 22 of the election petition is vague.

37. The allegation in para 23 of the election petition runs thus:—

That counting agents signature was a must after counting of each booth was over on

each table but as the counting was going on without the consent of the agents, hence they did not sign barring a few. The R. O. thus managed about 1,25,000 (one lac twenty five thousand) votes in favour of respondent no. 1 by not rejecting the disqualifying, illegal and invalid duplicate votes, under pressure of the ministers.

38. It would appear that the allegation in para 23 is also vague as the names of the counting agents concerned have not been disclosed. What is the basis for saying that the Returning Officer managed about 1,25,000 votes in favour of respondent no. 1 by not rejecting the disqualifying, illegal and invalid duplicate votes under pressure of the ministers has also not been disclosed. It was further pointed out that the names of the ministers concerned under whose pressure the Returning officer is alleged to have managed 1,25,000 votes illegally in favour of respondent no. 1, has also not been disclosed. In the affidavit it has been stated that the statement made in para 23 is based on information. What is the source of information has also not been disclosed. Under the circumstances the allegation contained in para 23 is also vague and suffers from lack of material facts.

39. In para 24 of the election petition it has been alleged that A. R. O. always avoided the complaints in absence of R.O. and intentionally facilitated unwanted counting only to ensure victory of respondent no. 1 as many of the complaints carried no meaning after counting was complete on a table. It may be pointed out that it has not been disclosed as to A.R.O. of which assembly constituency segment was avoiding complaints in absence of the R. O. and thereby facilitated unwanted counting to ensure victory of respondent no. 1. The names of the counting agents or election agents who made any complaint before the concerned A. R. O. has also not been disclosed. In the affidavit it has been stated that the statement made in para 24 derived from record and to the personal knowledge of the petitioner. What part of the statement contained in para 24 has been derived from the record and which part is based on the personal knowledge of the election petitioner has not been disclosed. No copy of any complaint has been annexed to the election petition in support of the allegation. As is apparent, even the allegation in para 24 of the election petition is vague and does not set out the material facts and particulars.

40. In para 25 of the election petition it has been stated that ballot papers of 75 booths were not accounted for till the day of counting and so even on written enquiry by the District B.J.P. office bearer

no reply was given by the R.O. As is apparent, even this allegation is too vague as the names of the assembly constituency segments to which the 75 booths appertained has not been disclosed. Similarly, the names and number of the aforesaid 75 booths have also not been disclosed. Even the name of the office bearer of the District B.J.P. who is said to have enquired from the R.O. has also not been disclosed. There is no affidavit by any such office bearer in support of the allegation as contained in para 25. Even the copy of written enquiry has not been annexed to the election petition. Under the circumstances the allegation in para 25 suffers from lack of material facts and particulars.

41. The allegation in para 26 of the election petition runs as follows :—

That all the above objections were made in writing by the petitioner's election agent and other candidates also for deleting the bogus, illegal and disqualifying invalid ballots to the R.O. under receipt but counting went on and result declared on 18-6-1991 under pressure of the Chief Minister even if stopped by Election Commissioner on telephone and telegram till further order.

42. It may be pointed out that written objections under proper receipt are alleged to have been raised by the election agent of the petitioner and other candidates before the Returning Officer but copy of not a single objection is annexed to the election petition in support of the allegation as contained in para 26. The name of election agent of the petitioner and list of the other candidates who are said to have raised written objections have also not been disclosed. Though it is alleged that the Election Commissioner had directed for stopping the counting of ballot papers on telephone and by telegram till further order but copy of the telegram is not annexed with the election petition. Under the circumstances the allegation in para 26 is also vague and suffers from lack of material facts.

43. The allegation in para 27 of the election petition runs thus :—

That candidates who boycotted counting after 2nd round detailed the bunglings to the Chief Election Commissioner and the Prime Minister on phone. The C.E.C. ordered the R.O. to stop counting till further order at 10.30 P.M. on 16-6-1991 but the R.O. continued counting and declared the result without permission of the Election Commission.

44. In his affidavit the election petitioner has stated that the statement made in para 27 of the election petition is based on information. What is the source of information has not been disclosed. Even the names of the candidates who are said to have boycotted

counting after 2nd round and who are alleged to have detailed the bunglings on telephone to the Chief Election Commissioner and the Prime Minister have not been disclosed. So the allegation in para 27 of the election petition is also vague and general in nature.

45. In para 28 of the election petition it has been stated that on 19-6-91 at 7.05 A.M. there was news broadcast from T.V. that the result of Kishanganj Parliamentary constituency had been withheld by the Election Commissioner and as such the election petitioner requested the C.E.E. on the same day by telegram to decide Kishanganj case after hearing all the parties concerned. The allegation in para 28 of the election petition is with regard to the irregularity and bunglings in counting of ballot papers but no paper has been annexed with the election petition in support of the statement made in para 28 of the petition.

46. In para 29 of the election petition the allegation is as follows :—

That the petitioner's victory would have discredited not only the five Mohammedan Ministers of Bihar Government who were deputed to look after Kishanganj election specially but had discredited the Chief Minister also who allowed Janta-Dal ticket to Sri Shahabuddin Respondent No.1, rejecting Sri Taslimuddin-Respondent No.6 and also these politically sound people never wanted that a simple man like this petitioner should get International fame over night and so every possible bunglings were done to ensure the victory of Respondent No. 1.

47. As is apparent, the allegation as contained in para 29 of the election petition does not contain any material fact with regard to the allegation made therein. The name of Ministers have also not been disclosed. What sort of bunglings and in which manner were done has also not been disclosed in para 29 of the election petition. It was contended on behalf of respondent No. 1 that allegation in para 29 simply contained the imagination of the election petitioner and suffers from lack of material facts. There appears substance in the contention of the learned counsel for respondent No. 1.

48. The allegation in para 30 of the election petition runs thus :—

That the ministers with their 140 officials and workers of Janta Dal engaged in manipulation of one lac duplicate invalid ballots by changing 500 ballot boxes originally caste in favour of the petitioner, have very cunningly distributed about 25,000/- invalid ballots amongst the independent and other party candidates and the rest 75 thousand invalid ballots in the pocket of respondent

No.1 so that the theft of one lac valid votes and replacement of the same by bogus, duplicate, illegal and disqualified invalid ballots may not be detected as the total duplicate ballots have not been casted in favour of only one candidate i.e. respondent no. 1 and in this way the non-genuine ballots have been made genuine and thus taken into courting.

49. In the affidavit it has been stated that the allegations made in para 30 of the election petition are based on information. The source of information has not been disclosed. The names of the ministers, officials and Janta Dal workers who had allegedly manipulated one lac duplicate invalid ballot papers by replacing 500 ballot boxes have also not been disclosed. There is no affidavit of that person in support of allegation who had informed or from whom the election petitioner got the information about the information contained in para 30 of the election petition. That being so, even the allegation in para 30 of the election petition suffers, from lack of material facts.

50. So far as the statements made in paras 31 and 32 are concerned, the same are by way of submission as stated in the affidavit.

51. As is apparent, the allegations in the aforesaid paragraphs of the election petition are vague and do not contain the material facts and particulars supporting the allegations made therein. Section 83 of the Representation of People Act provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and the place of the commission of each such practice. It has been held by the Supreme Court in several decisions that section 83 of the Representation of People Act is mandatory and omission of even a single material fact leads to an incomplete cause of action. As mentioned earlier the Supreme Court in its judgement reported in A.I.R. 1986 S.C. 1253 (Ajhar Hussain vs. Rajiv Gandhi) has held that an election petition can and must be dismissed under the provision of Civil Procedure Code if the mandatory requirement enjoined by section 83 to incorporate the material facts and material particulars relating to the alleged corrupt practice in the election petition are not complied with. It is also settled law that omission of a single material fact would lead to an incomplete cause of action and that an election petition without material fact relating to corrupt practice is not an election petition at all. It is also

relevant to state here that Supreme Court in the case of Dharti-pakar Madan Lal Agrawal Vrs. Shri Rajiv Gandhi reported in A.I.R. 1987 S.C. 1877 has held that on a combined reading of sections 81, 83, 86 and 87 of the Representation of People Act, it is apparent that those paras of the election petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 15 of the Civil Procedure Code as the Court is empowered at any stage of the proceeding to strike out or delete pleading which is unnecessary, scandalous, frivolous, vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It has been further held by the Supreme Court in the said case that it is the duty of the Court to examine the plaint and, it need not wait till the defendant files written statement and points out the defect and if the Court, on examination of the plaint or election petition, finds that it does not disclose any cause of action it would be justified in striking out the pleadings.

52. In the said case the Supreme Court has further held as follows:—“Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under section 100 it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving enquiry.”

53. The learned counsel for correspondent no. 1 referred to Rule 63 of the Conduct of Election Rules, 1961 and pointed out that the said rule provides an opportunity or creates a right in favour of an aggrieved candidate regarding the counting of ballot papers to file a petition for recounting of ballot papers but the election petitioner did not do so which goes to show that he had no genuine grievance regarding the counting of ballot papers otherwise he would not have failed in filing a petition for recounting before the returning officer after counting of the ballot papers and before the declaration of the official result. It was further contended that the conduct of the election petitioner in not filing a petition for recounting of ballot papers in accordance with rule 63 of the Conduct of Election Rules, 1961

goes to show that the allegations made in the election petition are after thought on his part. In this connection it was contended on behalf of the election petitioner that after the second round of counting the counting authority stopped announcing result round wise and as a result of that the petitioner was in dark about the votes secured by the candidate and under the circumstances he was debarred from filing a petition for recounting. There appears no force in this contention of the learned counsel for the election petitioner. If there were bunglings and manipulation in the counting of ballot papers in favour of respondent no. 1 at the instance of the Chief Minister and some other ministers, the natural conduct on the part of the election petitioner would have been to file a petition for recounting.

54. In view of what has been pointed out above, I am of the opinion that the allegations in the election petition as discussed above do not disclose complete cause of action and as such the election petition is not maintainable and it is liable to be dismissed summarily. The election petition is accordingly, dismissed but without costs. The officer shall intimate the decision to the Election Commission and the Speaker of the Lok Sabha and shall forward to the Election Commission in authenticated copy of the order.

Patna High Court,
the 28th June, 1995.
M.A. No. R.P.S./S

Sd/-
(ADITYA NARAYAN CHATURVEDI)

नई दिल्ली, 14 सितम्बर, 1995

आ.प्र. 64:—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए भारत निर्वाचन आयोग, मिजोरम सरकार के परामर्श से, मिजोरम सरकार के विकास आयुक्त और सचिव, वित्त योजना और कार्यक्रम क्रियान्वयन विभाग के श्री आर. पद्मनाभन, आई.ए.एस. को मिजोरम राज्य के लिए 7 सितम्बर, 1995 से आगामी आदेशों तक के लिए एतद्वारा नामित करता है। उन्हें निर्वाचन आयोग के अधीन निर्वाचनों से संबंधित काम करने वाले राज्य सचिवालय विभाग में सरकार के सचिव के रूप में भी पदाभिहित किया जाएगा।

2. आयोग ने यह देखा है कि श्री आर. पद्मनाभन, आई.ए.एस. के पास मिजोरम सरकार के विकास आयुक्त और सचिव, वित्त योजना और कार्यक्रम क्रियान्वयन विभाग

का अतिरिक्त कार्यभार है। आयोग मिजोरम राज्य में पूर्ण-कालिक मुख्य निर्वाचन अधिकारी रखने पर जोर नहीं दे रहा है चूंकि इस राज्य में केवल दो संसदीय निर्वाचन-क्षेत्र ही हैं। जैसे ही साधारण निर्वाचन आरम्भ होगा श्री आर. पद्मनाभन, आई.ए.एस., को प्रत्येक और सभी अतिरिक्त कार्यभार से मुक्त करना होगा और अनुपालन रिपोर्ट आयोग को भेजनी होगी।

3. श्री आर. पद्मनाभन, मिजोरम के मुख्य निर्वाचन अधिकारी के रूप में कार्य करते हुए उपर्युक्त पैरा 2 में उल्लिखित कार्यभार के अतिरिक्त मिजोरम सरकार के अधीन कोई अतिरिक्त कार्यभार, चाहे वह कुछ भी हो, आयोग की पूर्ण लिखित अनुमति के बिना ग्रहण नहीं करेंगे।

4. साधारण निर्वाचन के आरम्भ होने पर यदि श्री आर. पद्मनाभन को उनके सभी अतिरिक्त कार्यभारों से मुक्त नहीं किया जाता या आयोग की पूर्ण लिखित अनुमति के उल्लिखित कार्य के अतिरिक्त उन्हें किसी प्रकार का भी कार्यभार सौंपा या ग्रहण करवाया जाता है तो श्री पद्मनाभन को मुख्य निर्वाचन अधिकारी के कार्यालय में इस विशेष आदेश की शर्तों के अनुसार कोई भी ऐसे कार्यभार ग्रहण करने को तारीख से हटा दिया गया समझा जाएगा और कोई अन्य आदेश जारी नहीं किया जाएगा या उसकी आवश्यकता नहीं होगी। उसके पश्चात् मुख्य निर्वाचन अधिकारी के रूप में उनके कर्तव्यों और कार्य के निवाहने में उनके द्वारा की गई सभी या कोई कार्यवाई अप्राविष्टता क्षेत्राधिकार रहित और नामित और अन्य होगी और उनके विरुद्ध अनुशासनात्मक कार्यवाई की जा सकेगी।

[सं. 154/मिजो/95]

आदेश से, {

सी. आर. ब्रह्मम, सचिव

New Delhi, the 14th September, 1995

O.N. 64—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of the State of Mizoram hereby nominates Shri R. Padmanabhan, IAS, Development Commissioner and Secretary to the Government of Mizoram, Finance Planning and Programme Implementation Departments as the Chief Electoral Officer for the State of Mizoram with effect from 7th September, 1995 and until further orders. He will also be designated as Secretary to the Government in the department in the State Secretariat dealing with elections under the Election Commission.

2. The Commission has noted that Shri R. Padmanabhan IAS has additional charge of Development Commissioner and Secretary to the Government of Mizoram, Finance Planning and Programme Implementation Departments. The Commission is not insisting on a full-time Chief Electoral Officer in the State of Mizoram as the State has not more than two Parliamentary Constituencies. As soon as a general election

becomes imminent, Shri R. Padmanabhan, IAS shall be divested of all and every additional charge and a compliance report sent to the Commission.

3. Shri R. Padmanabhan while functioning as Chief Electoral Officer, Mizoram, shall not hold, without the prior written approval of the Commission any additional charge, whatsoever, under the Government of Mizoram over and above the charges mentioned in paragraph 2 above.

4. If Shri R. Padmanabhan is not divested of all his additional charges as soon as a general election becomes imminent or is entrusted with or ordered to hold any additional charges of any kind whatsoever over and above the charge mentioned in paragraph 2 above, without the prior written approval of the Commission, Shri R. Padmanabhan will stand removed from the office of the Chief Electoral Officer, Mizoram from the date of assumption of any such additional charge in terms of this very order and no other order will, or need to, be issued. All and any action taken by him thereafter in the discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised, without jurisdiction, non-est and null and void and he shall render himself liable to disciplinary action.

[No. 154/MIZ/95]

By Order,

C.R. BRAHMAM, Secy.

नई दिल्ली, 14 सितम्बर, 1995

आ.अ. 65.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 21 के उपबन्धों के अन्तर्गत में निर्वाचन आयोग निदेश देता है कि तारीख 27 सितम्बर, 1994 की इसकी अधिसूचना सं. 434/बिहार-लो.स./94 (1) में निम्नलिखित संशोधन किए जाएंगे, अर्थात्—

उक्त अधिसूचना में संलग्न सारणी के स्तंभ 2 में—

सद 33—बेगूसराय के सामने विद्यमान प्रविष्टि "जिला दण्डाधिकारी, मुंगेर" के स्थान पर "जिला दण्डाधिकारी बेगूसराय," प्रविष्टि अन्तःस्थापित की जाएगी।

[सं. 434/बिहार-लो.स./95(1)]

आदेश से,

के.पी.जी. कुट्टी, सचिव

New Delhi, the 14th September, 1995

O.N. 65.—In pursuance of the provisions of Section 21 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby directs that the following amendment shall be made in its Notification No. 434/BR-HP/94(1), dated the 27th September, 1994, namely:—

In column 2 of the Table appended to the said Notification—against item 33-Begusarai, for the existing entry "District Magistrate, Monghyr" the entry "District Magistrate, Begusarai".

shall be substituted.

[No. 434/BR-HP/95(1)]

By Order,

K.P.G. KUTTY, Secy.